TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 134.

NATHAN C. RUSSELL, APPELLANT,

vs.

ISAAC V. PLACE AND JOHN W. PLACE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1875.

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1 United States circuit court, northern district of New York.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

The complainant herein filed his bill of complaint, which is hereto annexed, on the 18th day of January, 1872, against the defendants herein. A subpœna was thereupon issued and was served personally, previous to the return-day thereof, on the defendants.

The defendants duly appeared in said cause, by J. M. Dudley, their solicitor, and on the 1st day of April, 1872, filed their answer to said bill of complaint; which said answer is hereto annexed.

On the 27th day of April, 1872, the complainant filed his replication to said answer; which said replication is hereto annexed.

2 On the 29th day of July, 1872, on filing stipulation signed by the solicitors for the respective parties, an order was entered herein appointing Jacob Wendell, esq., special examiner to take the testimony herein on behalf of both complainant and defendants; which said stipulation is hereto annexed.

On the 20th day of May, 1873, a stipulation for printing and publishing testimony, &c., was filed herein; which said stipulation is hereto annexed.

On the 20th day of May, 1873, a printed copy of the proofs taken by the respective parties was filed as original, pursuant to stipulation.

At the June term of said court, held at the village of Canandaigua on the 20th day of June, 1873, Hon. Ward Hunt, presiding judge,
3 the cause was submitted on said pleadings and proofs, and an order entered setting down the cause for argument before Hon. Ward Hunt, justice, at his chambers, in the city of Utica, on the 8th day of July, 1873.

At a session of said circuit court, held on the 8th, 9th, & 10th days of July, 1873, before the honorable Ward Hunt, justice, at his chambers, in the city of Utica, the said cause came on for argument upon said pleading and proofs, and was argued by counsel for the respective parties, and submitted to the court for decision.

Afterwards, to wit, at a special term of said circuit court, held at the city of Utica on the 16th day of August, 1873, present, Honorable Ward Hunt, justice, an order was made and entered herein dismissing the complainant's bill of complaint, with costs; which said order is hereto annexed.

4

5 United States circuit court, northern district of New York. In equity.

To the honorable the judges of the circuit court of the United States

for the second circuit within and for the northern district of New York:

Nathan C. Russell, of Johnstown, in the northern district of New York, a citizen of the State of New York, brings this his bill of complaint against Isaac V. Place and John W. Place, citizens of Johnstown, in said district.

6 And thereupon your orator complains and says that your orator, a citizen of the United States, being the true and original inventor of a new and useful improvement in the preparation and treatment of leather, not known or used before his application for letters-patent, did apply to the Commissioner of Patents of the United States for letters-patent for such invention and improvement, and fully and in all respects complied with all the requirements of the law in that behalf, and especially made oath that he verily believed himself to be the true inventor or discoverer of the said improvement, and also paid into the Treasury of the United States the sum of thirty dollars, and presented to the Commissioner of Patents of the United States a petition setting forth his desire to obtain an exclusive property in said invention and improvement, and praying that letters-patent might for that purpose be granted unto him; and also delivered and filed in said office of the Commissioner of Patents a written description of his said improvement, for the purpose of enabling any person skilled in the art with which said improvement is most nearly connected to make and use the same; which said description was duly signed by your orator and attested by two witnesses; and thereupon the said Commissioner of Patents caused letters-patent to be made out and issued to your orator in the name of the United States of America, in due form of law in all respects, bearing date the seventeenth day of August, one thousand eight hundred and sixty-nine, whereby was granted unto your orator, his heirs, executors, administrators, and assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used the said invention and improvement, which is entitled in said letters-patent "A new and useful improvement in the treatment of leather;" and the said letters-patent having been signed by the Secretary of the Interior of the United States, and countersigned and sealed with the seal of the Patent-Office by the Commissioner of Patents of the United States, and the same having been duly recorded, were delivered to your orator.

And your orator further shows unto your honors that said description so filed as aforesaid being defective and insufficient through inadvertence and mistake, and without any fraudulent intention, your orator duly surrendered said letters-patent to the Commissioner of Patents and applied for new letters-patent for said improvement, and fully and in all respects complied with all the requirements of law in that behalf,

7 and especially paid into Treasury of the United States the sum of thirty dollars, and also delivered and filed in said office of the Commissioner of Patents a written amended specification and description of his said improvement, in such full, clear, and exact terms as to enable any person skilled in the art with which the said improvement is most nearly connected to make and use the same; which said amended specification and description was duly signed by your orator and attested by two witnesses; and thereupon the said Commissioner of Patents caused new letters-patent to be made out and issued in the name of the United States of America, in due form of law in all respects, bearing date the first day of February, in the year one thousand eight hundred and seventy, whereby it was granted unto your ora-

tor, his heirs, executors, administrators, and assigns, for the term of seventeen years from the seventeenth day of August, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used the said improvement, which is entitled in said new letters-patent "A new and useful improvement in the treatment of leather;" and the said new letters-patent having been signed by W. T. Otto, Acting Secretary of the Interior of the United States, and countersigned and sealed with the seal of the Patent-Office by Samuel B. Fisher, Commissioner of Patents of the United States, and the same having been duly recorded, were issued and delivered unto your orator; all of which will more fully appear in and by the said new letters-patent, to which, for greater certainty, your orator craves leave to refer.

And your orator further shows unto your honors that heretofore, viz, on the twentieth day of June, in the year one thousand eight hundred and seventy, as yet of the March adjourned term of this honorable court, in said year, your orator impleaded the said defendants in an action at law for a violation of the exclusive privilege secured to your orator by the letters-patent last aforesaid, by making and using said improvement so patented as aforesaid, and by causing the same to be made and used by others in Johnstown aforesaid, and divers other places in the northern district of New York; and thereupon the said defendants having pleaded that they were not guilty in manner and form as your orator had declared against them, and accompanied their said plea with notice of special matter touching the validity of said patent, and issue being joined thereon, such proceedings were had thereon that afterwards, after a term of this honorable court, held in and for the northern district of New York, at the city-hall in the city of Albany, on the eleventh and twelfth days of October, in the year one thousand eight hundred
8 and seventy, before the honorable Lewis B. Woodruff, circuit judge, said cause was committed to a jury, who returned the verdict therein upon oath, and found that said defendants were guilty in manner and form as your orator had declared against them, and assessed damages in the sum of seven hundred dollars.

And afterwards, at a term of this honorable court held in and for the northern district of New York, at the city-hall in the city of Albany, on the tenth day of October, in the year one thousand eight hundred and seventy-one, before the honorable Lewis B. Woodruff, circuit judge, judgment was ordered upon said verdict with an increase of damages in favor of your orator for twelve hundred dollars damages and costs; and thereafterwards, on the fourth day of November, in the same year, as yet of said October term, judgment was rendered in said cause in favor of your orator against said defendants for twelve hundred dollars damages and one hundred and twenty-nine dollars and forty-six cents costs, as by the record and proceedings thereof still remaining in this honorable court more fully and at large appears.

And your orator further shows unto your honors that the defendants, since the twentieth day of June, 1870, at Johnstown aforesaid and divers other places, without the consent and allowance and against the will of your orator, have been engaged in making, using, and selling and vending to others to be used, to a large extent, the said invention and improvement so patented as aforesaid, and in dressing, preparing, and treating skins and leather in the manner and according to the process patented by your orator as aforesaid, and in manufacturing and selling a large amount of gloves and mittens from skins and leather prepared and dressed in accordance with your orator's patented process as aforesaid, and in viola-

tion and infringement of his exclusive right so secured to him by said letters-patent as aforesaid, and also in causing others to make, use, and sell said invention and improvement in violation and infringement of the exclusive right so secured to your orator as aforesaid.

And your orator has requested the said defendants to desist and refrain from further making, using, and selling, and vending to others to be used, said invention and improvement, and from causing others to do the same, and to account with and pay to your orator the damage sustained by him by reason of the unlawful manufacture, use, and sale of said invention and improvement, and also to account with and pay to your orator the profits made by said defendants by such unlawful manufacture, use, and sale.

9 But so it is, may it please your honors, that the said defendants have made, used, and sold, and vended to others to use, said invention and improvement, and caused others to do the same, and continue to make, use, and sell, and vend to others to use, said invention and improvement, and cause others to do the same, in violation of the right secured by said letters-patent, and refuse to account with and pay over to your orator the profits made by said defendants by reason of such unlawful manufacture, use, and sale; all which is contrary to equity and good conscience. In consideration whereof, and forasmuch as your orator can only have adequate relief in this honorable court, where matters and things of this kind are made cognizable by statute:

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may severally and respectively, upon their corporal oath and according to their best and utmost knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to the matter and things hereinbefore stated and charged; and that the said defendants may answer the premises, and that they may be decreed to account with and pay over to your orator all such gains and profits as have accrued to them from making, using, and vending said invention and improvement, and causing others to do the same, since the twentieth day of June, in the year one thousand eight hundred and seventy, and also to account with and pay over to your orator the damages sustained by your orator by reason of such unlawful manufacture, use, and sale, and that said defendants may also be decreed to pay unto your orator such additional damages, not exceeding in the whole three times the amount of actual damages, as to this honorable court shall seem just;

May it please your honors, the premises considered, to grant unto your orator a writ of injunction issued out of and under the seal of this honorable court, (or issued by one of your honors according to the form of the statute in such case made and provided,) enjoining and restraining the said defendants, jointly and severally, their clerks, attorneys, agents, servants, and workmen, from making, using, selling, or vending to others to use, said invention and improvement, or causing others so to do, and from dressing, preparing, and treating skins and leather in the manner and according to the process described in the letters-patent aforesaid, or causing or procuring others so to do, and that your orator may have such further and other relief as the nature of the case may require and to your honors may seem meet.

10 May it please your honors to grant unto your orator not only the writ of injunction conformable to the prayer of this bill, but also a writ of subpœna directed to the said Isaac V. Place and John W. Place, defendants, commanding them and each of them on a day certain, therein to be named, to appear in this honorable court, and then

and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against them or either of them.

And your orator as in duty bound will ever pray, etc.

NATHAN C. RUSSELL,
Complainant.

HORACE E. SMITH,
Solicitor, and of Counsel for Complainant.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

At Johnsontown, in the county of Fulton and district aforesaid, on the seventeenth day of January, A. D. 1872, personally appeared the above-named Nathan C. Russell, who being duly sworn according to law, deposeth and saith that he is the complainant in the foregoing bill, and has heard the same read and knows the contents thereof. That the said bill is true of his own knowledge except as to those matters which are therein stated to be on information and belief of the complainant, and as to those matters he believes it to be true.

That this deponent verily believes himself to have been the first and original inventor of the improvement claimed in said letters-patent.

[L. S.] NATHAN P. WELLS,
Notary Public.

(Indorsed:) Filed January 18, 1872.

United States circuit court, northern district of New York.

Answer.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

The joint and several answers of the said Isaac V. Place and John W. Place, respondents, to the bill of complaint of Nathan C. Russell.

11 The said respondents, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as these respondents are advised is or are material or necessary for them to make answer unto, these respondents, for answering, say:

That they are informed and believe that letters-patent of the United States, bearing date the 17th day of August, A. D. 1869, were granted to Nathan C. Russell, the complainant, purporting to grant to him, his heirs, executors, administrators, and assigns, for the term of seventeen years, the free and exclusive right and liberty of making, using, and vending a certain improved process of treating leather so as to render it suitable for the manufacture of gloves, etc., therein alleged to be new and useful; but they deny that the said complainant was the first or original inventor or discoverer of the said alleged improved process, etc., or of any material or substantial part of the same claimed therein as new, and they deny that the said complainant was the first or original inventor or discoverer of any improved process of treating leather, or any part thereof, attempted to be therein described and claimed as new.

They deny that the same had not been known and used before the alleged invention thereof by said complainant.

And your respondents admit that the said complainant did obtain new and reissued letters-patent of the United States, bearing date the first day of February, A. D. 1870, for an "improvement in the treatment of leather," and therein alleged to be new and useful, and purporting to grant to said Russell, his heirs, executors, administrators, and assigns, for the term of seventeen years from the 17th day of August, 1869, the full and exclusive right and liberty of making, using, and vending to others to be used, a certain "improvement in the treatment of leather;" but they deny that said Russell was the first or original inventor or discoverer of the said alleged "improvement in the treatment of leather," or of any material or substantial part thereof, attempted to be therein described and claimed as new. They deny that the same has not been known and used before the alleged invention or discovery thereof by said Russell.

They have no knowledge and cannot say whether or not the description or specification in the original patent issued as aforesaid were defective or insufficient; but they deny that the same were defective or insufficient through inadvertence or mistake and without any fraudulent intention.

12 They deny that the complainant fully and in all respects complied with all the requirements of law in respect to procuring reissued letters-patent; deny that the amended specification mentioned in the bill of complaint was in such clear, full, or exact terms as to enable any person skilled in the art with which the said alleged improvement is most nearly connected to make and use the same; deny that the said reissued letters-patent were granted according to law, and deny that by virtue of the said grant thereof the said Russell became or ever has been the sole and exclusive owner of the rights or privileges alleged to be secured thereby. And the said respondents are informed and advised, and so believe and aver, that the said original letters-patent were in every respect, in part and in whole, invalid and void. That the same were not surrendered to correct any mistake or inadvertence therein, or defect or insufficiency thereof, or in the description or specification thereof; but that they were surrendered to claim other alleged inventions or improvements not made, invented, or discovered by said complainant, and that they were surrendered with the fraudulent intention to deceive and mislead the public.

And that said reissued letters-patent, inasmuch as they differ, if at all, from the original letters-patent, were not for the same alleged invention or improvement, or any part thereof, as the said original letters-patent.

And your respondents, further answering, say that the original letters-patent were not inoperative or invalid by reason of an insufficient or defective description or specification; and the respondents, upon their information and belief, deny that in his application for such reissued letters-patent said complainant complied with all the requirements and forms of law in such cases made and provided, and aver that said complainant, under pretence of a defect and insufficiency in his original specification and letters-patent, by inadvertence, accident, or mistake, without any fraudulent or deceptive intention, in fact obtained his reissued letters-patent upon the same specifications as in the original letters-patent, without any material or substantial variation therefrom in any part, except in the addition of the first claim in such reissued patent and specification, which was not the first or original inventor or discoverer.

And your respondents, further answering, aver upon their information and belief that said Russell, for the purpose of deceiving the public, filed his description and specification in the Patent-Office for and as part of his said reissued letters-patent, containing less than the whole truth relative to his alleged invention or discovery, and more than was nec-
13 essary to produce the desired effect, and that the said patentee and complainant claimed therein more than that of which he was the first or original inventor or discoverer, and that said patentee and complainant did not before the commencement of this suit, and has not since, made disclaimer thereof and filed the same in the Patent-Office, according to the statute in such case made and provided, but has unreasonably neglected and delayed so to do; and they further aver that the said alleged invention or discovery, process, or thing patented as aforesaid, and material and substantial part thereof, had been in public use, and leather treated according to the process and alleged invention or discovery in said reissued letters-patent set forth had been on sale more than two years before the first application for the original patent by said complainant, and that the same had been in use and on sale more than two years before said application, with said complainant's knowledge and consent, and had been abandoned to the public.

And these respondents, further answering, admit that the complainant impleaded them and obtained judgment in said suit, as in the bill of complaint set forth, but deny, upon their information, advisement, and belief, that the same issues were involved or tried in said action as are herein raised in this suit.

And your respondents, upon their knowledge, information, and belief, further answering, deny that they have been or are in any way infringing or have caused others to infringe any rights secured to the complainant by the said reissued letters-patent, and deny that they have at any place within the said northern district of New York, or at any other place, since the 20th day of June, 1870, made, used, or sold said invention, discovery, or improvement patented aforesaid, or caused others so to do, unless such alleged invention, discovery, or improvement, patented as aforesaid, is substantially or materially the same process well known and used by them and others long anterior to the time of said complainant's alleged invention or discovery. They admit that they have manufactured and sold gloves and mittens, but deny that they have treated or prepared leather for gloves and mittens according to the complainant's alleged process, or caused others to do so, since the time last aforesaid, and deny that they have made or have caused others to make gloves and mittens from leather prepared and used in accordance with the complainant's alleged process, unless such process is the same substantially as used and employed by them and others long anterior
14 to the complainant's alleged invention or discovery, and deny that such manufacture and sale was in violation or infringement of any exclusive right secured to complainant by his said letters-patent, and deny that they, by any manufacture and sale of gloves and mittens from any leather prepared and dressed by them, or by any other person or persons, have violated or infringed any rights secured to said complainant by his letters-patent.

And they deny that they have sold said process or caused the same to be used or sold others.

And your respondents, further answering, upon their knowledge, information, and belief say that the said complainant was not the first or original inventor or discoverer of any material or substantial part of the process, matter, or thing alleged to have been patented in and by

his alleged letters-patent, and that the alleged invention or discovery, process, matter, and thing patented, or substantial or material parts thereof claimed as new, was, before his alleged invention or discovery thereof, known to and used by the following-named persons at the following-named places, viz: Samuel Dodge, senior, Samuel Dodge, jr., Isaac V. Place, John W. Place, George W. Gillette, Niles Fairbanks, Uriel Case, James Hewittson, Henry Adams, Joseph Arhart, Henry Hull, Solomon Jeffers, John Stewart, William H. Monroe, George Monroe, Adam Quackenbush, James L. Northrup, David D. Miller, Mark Hull, Philander C. Heacock, Samuel Damphier, Allen C. Churchill, Daniel B. Judson, Sidney S. Plummer, George Jeffers, Aaron Simmons, Charles B. Wessells, Albert Johnson, John Stoner, William B. Mills, James Robinson, James Kent, Alanson Judson, Charles Judson, Austin Porter, Theodore Welch, Daniel Lasher, Daniel Hayes, Philip Fliegal, William Bentley, Elliott Thomas, Jaynes Thomas, John King, David H. Cuyler, John McNab, James Christie, George Mill, John White, Henry E. Crouse, Nesson M. Sutliff, Jonathan Rickets, James Sutliff, Thomas Rust, Andrew P. Smith, Richard Smith, John Paramore, David A. Wells, Abiram S. Van Voast, Andrew Walker, Nathaniel Bentley, Lucien Bertrand, Theophile Bertrand, William Rust, John Filmore, Purdy Van Wart, Barney Graff, Harry C. Jones, George McKee, Lewis P. Johnson, L. D. Atwater; each and all of whom, except the said James Chapman, George Monroe, George McKee, Henry C. Jones, and L. D. Atwater, reside in the town of Johnstown, in the county of Fulton, in the said northern district of New York, and was known to and used by them and each of them as aforesaid, except the said George Monroe and L. D. Atwater, at the said town of Johnstown, and was known to and used by the said George Monroe, who is now deceased, at Charlestown, Roxbury, and Dedham, in the State of Massachusetts.

And was also known to and used by the said James L. Northrup in the town of Broadalbin, in said county of Fulton, and at Johnstown aforesaid; and was also known to and used by the said William H. Monroe at Charlestown, Roxbury, and Dedham, in the State of Massachusetts, being that part of Dedham now called Norwood, in the State last aforesaid; and was also known to and used by said Henry Adams at Montreal, in the Dominion of Canada, as well as at Johnstown aforesaid; and was also known to and used by Smith & Covert and George Hendric, Robert G. Hendric, James Hendric, and Gardner Hendric, each and all of whom reside at the city of Albany, in the said northern district, and was known to and used by them at the place last aforesaid.

And was known to and used by Lyman Smith & Sons, who reside at Norwood, in the State of Massachusetts, formerly being a part of the town of Dedham, in the State last named; and was known to and used by the said James Chapman at Johnstown aforesaid, and at Amsterdam, in the county of Montgomery, in said northern district; and that the said George McKee resides in the city of New York, and the said matter, thing, or process patented was known to and used by him at the place last named; that the said L. D. Atwater resides at Marion in the State of New Jersey, and knew and used said process as aforesaid in the city of New York; and that said Henry C. Jones resides at the city of Rochester, in said northern district, and knew and used said process as aforesaid at that place and at Johnstown aforesaid.

And your respondents, further answering, upon their knowledge, information, and belief say that the said alleged invention or discovery, or substantial or material parts thereof claimed as new, was before the

alleged making or discovery thereof by the said complainant described in the following-named printed publication viz: "Chemistry as applied to Arts and Manufactures," by Dr. Sheridan Muspratt, vol. 2, pages 491, &c.

And your respondents, further answering, upon their knowledge, information, and belief say that the alleged process, invention, or discovery of the complainant's, mentioned in his alleged letters-patent, is in fact an old and well-known process to all those engaged and skilled in the trade and business with which it is connected, and has been in public and familiar use for a great number of years before the date of the said complainant's alleged invention or discovery.

16 And your respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for the respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of your respondents.

And for the reasons aforesaid your respondents submit that they ought not to be decreed to account for or pay over any supposed gains, proceeds, profits, or damages, and ought not to be restrained or enjoined as prayed for in the said complainant's bill of complaint, and they submit that the complainant is not entitled to any relief whatever against your respondents. All which matters and things your respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ISAAC V. PLACE.
JOHN W. PLACE.

JAMES M. DUDLEY,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
Northern District of New York:

Isaac V. Place and John W. Place, being duly sworn, doth depose and say, and each for himself says, that he is one of the defendants named in the foregoing answer subscribed by him; that he has heard read the said answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he verily believes it to be true.

ISAAC V. PLACE.
JOHN W. PLACE.

Subscribed and sworn to this 30th day of March, A. D. 1872, before me.

[L. S.]

N. P. WELLS,
Notary Public, Fulton County, N. Y.

(Indorsed:) Filed April 1, 1872.

17, 18 United States circuit court, northern district of New York. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

The replication of the above-named complainant to the joint and several answer of Isaac V. Place and John W. Place, defendants.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiences of the said answer, for replication thereunto says that he will ever maintain and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and is insufficient to be replied unto by repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays, as in and by said bill he has already prayed.

H. E. SMITH,
Solicitor and of Counsel for Complainant.

(Indorsed:) Filed April 27, 1872.

19 U. S. circuit court, north. dist. of N. Y. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

It is hereby stipulated—

I. That the evidence in the above-entitled cause be taken orally by and before Jacob Wendell, esq., of Fort Plain, a United States commissioner, at the office of H. E. Smith & Son, in the village of Johnstown, N. Y.

II. That said testimony be taken at such time and times as the paries hereto may agree.

III. That, in case of failure to agree upon time or times, then the testimony shall be taken at such time and times as said commissioner, upon the application of either party, may appoint; but five days' previous notice, in writing, of such time and times shall be given to the adverse party.

20 IV. That, upon the filing of this stipulation by either party with the clerk of this court at Utica, he shall be authorized to enter such rule or order as may be necessary, under the rules and practice of this court, to effectuate this stipulation.

Dated July 27, 1872.

JAMES M. DUDLEY,
Sol: for Defts.
H. E. SMITH,
Solicitor for Complainant.

21, 22 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Nathan C. Russell vs. Isaac V. Place & John W. Place. Stipulation as to taking testimony. Filed July 29, 1872.

23 United States circuit court, northern district of New York. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE & JOHN W. PLACE.

The taking of testimony in the above-entitled cause before Jacob Wendell, esq., special commissioner, having closed, it is hereby stipulated and consented as follows, to wit:

First. That said testimony need not be returned into the clerk's office until the same shall have been printed.

Second. That the same may be printed under the superintendence of Jacob Wendell, esq., the special examiner aforesaid.

Third. That a copy of said testimony, when printed, shall be returned into the clerk's office; and such return shall be deemed a compliance with the rule requiring the testimony taken before the examiner
24 to be returned into the clerk's office. And said printed copy so returned shall be *returned shall be* deemed and held the original testimony in the suit taken before said examiner.

Fourth. That publication of the testimony shall be deemed to have passed in the clerk's office, and no order or entry for the publication of the same shall be necessary.

Dated April 8th, 1873.

HORACE E. SMITH,
Solicitor for Complt.
J. M. DUDLEY,
Solicitor for Defendants.

25, 26 (Indorsed:) U. S. circuit court. In equity. Nathan C. Russell vs. Isaac V. Place & John W. Place. Stipulation for printing and publishing testimony. Horace E. Smith, solr. for complt. Johnstown, N. Y. Filed May 20, 1873.

27, 28 At a special term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the city of Utica, on Saturday, the 16th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Ward Hunt, justice.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

This cause, having heretofore come on for a hearing upon pleadings and proofs, and having been argued by counsel for the respective parties, and the court having considered the same, ordered that the bill of complaint herein be, and the same is hereby, dismissed with costs.

29 U. S. circuit court, northern dist. of New York. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE & JOHN W. PLACE.

It is hereby consented and stipulated that the order in this cause,

allowing an appeal bearing even date with the order dismissing bill of complaint, may be entered by the clerk nunc pro tunc of the same date as the entry of said order dismissing bill of complaint.

Dated October 30, 1873.

J. M. DUDLEY,
Solr. for Defendant.

30 (Indorsed:) U. S. circuit court, northern dist. of New York. In equity. Nathan C. Russell vs. Isaac V. Place & John W. Place. Stipulation for entry of order, &c. H. E. Smith, solr. for complt. Filed Nov. 3, 1873.

31 At a special term of the circuit court of the United States of America for the northern district of New York, in the second circuit held at the city of Utica on Saturday, the 16th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Ward Hunt, judge.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE & JOHN W. PLACE.

This cause, having come on for hearing upon pleadings and proofs at the present term of this court, and an order having been made and entered therein, dismissing the bill of complaint with costs, on application of the complainant in open court for the allowance of an appeal from such order, and the final decree thereon to the Supreme Court of the United States, ordered that such appeal be, and the same is hereby, allowed.

Allowed.

WARD HUNT,
Ass. Just. Sup. Court.

Consent is hereby given on the part of defendants that the within order be made and entered.

JAMES M. DUDLEY,
Solicitor for Defendants.

32 (Indorsed:) U. S. circuit court, north'n dist. of New York. In equity. Nathan C. Russell vs. Isaac V. Place et al. Order allowing an appeal. Horace E. Smith, solr. for complt. Johnstown, N. Y., Nov. 3, 1873. Filed nunc pro tunc as of the 16th day of August, 1873.

33 Wherefore the costs of the defendants are taxed at sixty dollars and eighty-eight cents ($60.88.)

Whereupon the said pleadings, decree, and other papers required, are now attached together and hereto annexed, and the said decree is signed and enrolled according to law.

Judgment signed and decree enrolled this 10th day of November, A. D. 1873.

CHARLES MASON, *Clerk.*

34 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Nathan C. Russell vs. Isaac V. Place and John W. Place. Enrolled decree. J. M. Dudley, defts.' solr. Taxed costs, $60.88. Filed November 10, 1873, 5 o'clock p. m.

35, 36 United States circuit court, northern district of New York. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

On this 4th day of April, 1873, at the office of H. E. Smith & Son, in the village of Johnstown, Fulton County, in said northern district of New York, the parties by their respective counsel (pursuant to an order of this court, made and entered in the above-entitled cause on the 31st day of July, 1872, appointing the undersigned special examiner to take the testimony in said cause) appeared before me, when the following proceedings were had, to wit:

It is admitted by the parties, that the action at law, in which a judgment was recovered by this plaintiff against these defendants, for an infringement of this patent, was commenced June 20, 1870, and the verdict of the jury therein was rendered on the 12th day of October, 1870, and that said judgment has been paid in full by said defendants. The admission as to the time of the rendition of the verdict is taken, subject to plaintiff's objection to its materiality.

WILLIAM B. MILLS, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

I am about 45 years of age. I reside in Gloversville. My business is dressing leather. I worked for Isaac V. Place, in a skin mill that he owned near Gloversville, in January, 1871. I commenced there, and worked till 1872, in January. During that time bark-tanned sheep or lamb skins were dressed there, in warm fat liquor. That was done by heating the fat liquor and immersing them in it while it was warm.

Q. State, as near as you are able, the number of dozen per week, on the average, thus treated there while you were there as you have stated.

A. They did not treat skins that way every week, all the time during the whole year.

Q. State the portions of the year that they did so treat skins, and the average number per week.

A. I think they quit, at that time, towards April. They did not come with any more after that time, not that I remember. As to the number treated per week, all the guide I have is what John W. Place told me, some 20 or 25 dozen to a time; that was twice a week.

Q. Twice a week from about the first of January to about the first of April?

A. Yes, sir.

Q. Did you see them treated, those different batches?

A. Yes, sir.

Q. About how many, in your judgment, would they average per week?

A. I think they would average from 500 to 600 skins a week.

Q. During that period, were these defendants together in that business as partners?

A. In manufacturing they were.

37 Q. Do you know where these skins were taken after being so treated?

A. I don't.

Q. Did you ever hear John W. Place say?

A. I never heard John W. Place say anything about it.

Q. Did John W. Place bring these skins to the mill and treat them or assist in treating them?

A. He did.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. While in the employ of Isaac V. Place, in 1871, did you work wholly at his skin mill near Gloversville?

A. I did.

Q. Did he dress skin at that mill during 1871 for various persons?

A. He did.

Q. In what vessel was the fat liquor warmed that was used in treating the bark-tanned sheep and lamb skins mentioned by you?

A. It was warmed in a two-barrel cauldron-kettle in the mill, a kettle kept there for general use.

Q. Did you observe, and can you state, how warm the fat liquor was made?

A. Well, I had my fingers in it—sometimes, I should think, as warm as milk.

Q. Was it ever made warmer, to your knowledge?

A. I don't know that it was, that I have any knowledge of.

Q. Were the skins immersed in the same kettle?

A. They were.

Q. Did you ever know more than one kettle of liquor to be prepared and used for the treatment of what you supposed to be from about 20 to 25 dozen of bark-tanned skins?

A. I did.

Q. Did Isaac V. Place have anything to do with the treatment of these skins?

A. I should say he did.

Q. What?

A. He found fault or said something about there was not sad oil enough made with the fat liquor. Then I said, "You can't expect to dip skins all the time and get sad oil too;" and then he said, "I see where my fat liquor has gone." I asked him if he didn't charge for it; he said no; that he furnished the fat liquor and John W. treated the skins.

Q. When was this conversation between Isaac V. Place and you?

A. It was somewhere along while I was at work there; in the spring some time.

Q. Can you state the month?

A. No.

Q. Can you say it was not in January?

A. Yes; I can.

Q. Can you say it was not in February?

A. I couldn't say positively.

Q. You can't state positively how long or up to what time bark-tanned sheep or lamb skins were treated with fat liquor, as you have stated, at Place's mill in 1871, can you?

A. No; not positively.

Q. You never counted the skins, so as to be able to tell how many were treated, did you?

A. No.

Q. When was it that John W. Place told you the number he treated at a time?

A. At the time he was to work there at it.

Q. State when it was.

A. That I could not exactly do; the time, the day, or the month was along the first part; I think it was in January.

38 Q. State all the conversation you had with John W. Place, in reference to the number of skins treated at a time, if you remember.

A. Well, the substance was this, merely. I had to save the fat liquor for the purpose. I told him I ought to know what amount, and what to do, so as to be ready prepared for it. He told me to save a kettle full and a barrel full, or about that. I asked him how many skins he had then to dip. He said about 25 dozen, and he wanted the same liquor each time.

Q. Have you now stated all the conversation had with John W. Place on this subject, that you now remember?

A. I think I have.

Q. When, and by whom, was your attention first called to this matter since you left the employ of Place, in January, 1872?

A. I couldn't tell.

On his redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Referring to your answer on the cross-examination, in which you say in substance that during the time you were there Mr. Place treated skins for other people at that mill, please state whether he treated any bark-tanned sheep or lamb skins in warm fat liquor (as you have described) for other people; and, if so, for whom, and how many did he so treat.

A. He did, by the help that was there, for John H. Putman. It wasn't a great many; cannot exactly tell; I charged the skins on the book myself; were perhaps six or seven hundred, as near as I can remember.

Q. Was the vessel containing the fat liquor, in which the skins were treated by John W. Place as you have described, on a stove during such treatment?

A. It was.

Q. And was there a fire kept in the stove under such kettle during such treatment?

A. There was.

Q. Did you always test the temperature of the liquor by your hand or otherwise?

A. I did not.

Q. You do not, then, mean to be understood as testifying, do you, that the liquor was never raised to a temperature above milk-warm?

A. No; I don't.

Q. Were the other batches about the same size of the one spoken of on your cross-examination, which John W. Place said contained twenty-five dozen?

A. They was.

On his further cross-examination by defendants' counsel the witness further testified as follows:

Q. Did you take any part in treating the bark-tanned sheep and lamb skins spoken of by you; and, if so, what?

A. I did. At one time I straightened out the neck, when John W. Place threw them out on a barrel, after taking them out of the
39, 40 kettle; and most of the cases I helped load them on the sleigh. That is all in regard to the skins John W. Place treated.

WILLIAM B. MILLS.

Subscribed and sworn this 4th day of April, 1873, before me.

J. WENDELL,
Special Examiner.

The following stipulation was thereupon entered into by the respective parties, to wit:

Stipulated, that so much of the evidence taken, including exhibits, proceedings, and stipulations given in evidence in the suit of this plaintiff, Nathan C. Russell, against Samuel Dodge, senior, and Samuel Dodge, jr., defendants, now pending in this court in equity for an alleged infringement by said defendants of plaintiff's patent for an "improvement in the treatment of leather," as in itself may be competent, material, proper, and admissible in this suit, may be read and used in evidence herein on the trial and argument and upon all further proceedings and appeals, and is hereby adopted in this case with the same force and effect as though such evidence had been regularly given and taken herein, subject to all legal and valid objections thereto, other than the fact that it was originally given and taken in another suit.

J. WENDELL,
Special Examiner.

All of which is respectfully submitted.

J. WENDELL,
Special Examiner.

(Indorsed:) Filed May 20, 1873.

41 *advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says, that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto: and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by repliant; without this, that any other matter or thing whatsoever, in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays, as in and by said bill he has already prayed.*

H. E. SMITH,
Solicitor, and of Counsel for Complainant.

At a special term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the city of Utica on Wednesday, the 31st day of July, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Lewis B. Woodruff, judge.

NATHAN C. RUSSELL
against
SAMUEL DODGE, SENIOR, AND SAMUEL DODGE, junior.

On filing stipulation signed by the solicitors for the respective parties herein, and on motion of H. E. Smith, complainant's solicitor, ordered that Jacob Wendell, esq., of Fort Plain, be, and he hereby is, appointed special examiner to take testimony for the complainant and defendant herein.

A copy as entered.

[L. S.] CHARLES MASON, *Clerk.*

42 *Complainant's evidence.*

United States circuit court, northern district of New York, in equity.

NATHAN C. RUSSEL
against
SAMUEL DODGE, SENIOR, AND SAMUEL DODGE, junior.

On this 13th day of August, 1872, at the office of H. E. Smith and Son, in the village of Johnstown, Fulton County, in said northern district of N. Y., the parties, by their respective counsel, pursuant to an order of this court made and entered in the above-entitled cause on the 31st day of July, 1872, appointing the undersigned special examiner to take testimony in said cause, appeared before me, when the following proceedings were had, to wit:

Plaintiff puts in evidence letters-patent of the United States bearing date February 1, 1870, together with the specifications and papers thereto annexed, said patent being for the alleged invention mentioned in the bill of complaint. And it is hereby stipulated that said letters-patent and paper may be read in evidence on the hearing of said cause, by either party.

No. 3816. Re-issue.

The United States of America to all to whom these letters-patent shall come:

Whereas N. C. Russel, of Gloversville, N. Y., has alleged that he has invented a new and useful improvement in the treatment of leather, (for which letters-patent were issued to him dated August 17, 1869, which letters having been surrendered, the same have been cancelled, and new letters ordered to issue to him on an amended specification,) and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and
43 presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are therefore to grant to the said N. C. Russell, his executors, administrators, or assigns, for the term of seventeen years from the seventeenth day of August, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

[L. S.] In testimony whereof, I have caused these letters to be made patent and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first day of February, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth.

W. T. OTTO,
Acting Secretary of the Interior.
SAMUEL S. FISHER,
Commissioner of Patents.

Countersigned and sealed with the seal of the Patent-Office.

UNITED STATES PATENT-OFFICE.

Nathan C. Russell, of Gloversville, New York. Letters-patent No. 93910, dated August 17, 1869; re-issue No. 3816, dated February 1, 1870. Improvement in the treatment of leather.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, Nathan C. Russell, of Gloversville, in the county of Fulton, and State of New York, have invented a new and useful improvement in the preparation of leather; and I do hereby declare that the following is a full, clear, and exact description of the same:

My invention consists in a novel treatment of what is known as "bark-tanned lamb or sheep skin," an article used by book-binders, and which, while sufficiently soft and supple for the purposes of their trade, is too hard and stiff for glove-making, and a variety of other purposes. This objection is removed by my treatment of the article, and the latter rendered so soft and free, yet full in respect of body, as to adopt it, among other purposes or uses, to the making of what are termed "dog-skin gloves."

The principal feature of the invention consists in the employment of what is known amongst tanners and others as "fat liquor," which is ordinarily obtained by scouring deer-skin after tanning in oil, but which, when it is not convenient to obtain in this manner, may be produced, or a liquor having the same character obtained, by the cutting of oil with a suitable alkali.

In treating leather with the "fat liquor," it is desirable to heat the latter to or near the boiling-point, and it is preferred to use the same in connection with other ingredients. Thus, for instance, there may be added to each ten gallons (10 gals.) of such heated fat liquor, eight ounces (8 oz.) of sal soda, twelve ounces (12 oz.) of common salt, one pint (1 pt.) of soft soap, or an equivalent quantity of hard soap, and four ounces (4 oz.) of Venetian red, such ingredients to be well stirred and mixed with the fat liquor.

This forms a good treating mixture or compound, and when made in the foregoing quantity, will suffice for five or six dozen skins; but of course such quantity may be more or less varied, as may also the proportions of the ingredients, and the Venetian red, or other coloring matter, be modified or omitted, as desired.

To effect the treatment hereinbefore referred to, of the bark-tanned lamb or sheep skin, the same should be well dipped in or saturated with the fat liquor or compound of which fat liquor is the base. This may be done by laying the skin to be treated on a table or other suitable surface, and rubbing the fat liquor or compound on or into both sides of the skin, using, for the purpose, a horse or other suitable brush, or rubber, by which it can be worked into the skin, that is afterward hung out to dry, and subsequently "staked," when the character of said skin will be found entirely changed from harshness to softness, and in other respects, thereby adapting it to the manufacture of gloves of the description previously named, and to a variety of other purposes for which said skin was not suitable prior to the treatment of it I have herein described.

What is here claimed, and desired to be secured by letters-patent, is:

1. The employment of fat liquor in the treatment of leather, substantially as specified.

2. The process, substantially as herein described, of treating
45 bark-tanned lamb or sheep skin, by means of a compound composed and applied essentially as specified.

N. C. RUSSEL.

Witnesses:
FRED. HAYNES.
FERD. TUSCH.

Plaintiff offers in evidence a judgment-record in this court in a suit at law for an infringement of the patent aforesaid in which this complainant was plaintiff, and Isaac V. Place and John W Place were defendants, together with all the pleadings, record, papers, and proceedings therein.

To which evidence the defendant's counsel duly objected, on the following grounds, to wit:

First. The evidence is inadmissable and improper in this cause.

Second. The evidence is immaterial and irrelevant.

Third. That the action in said judgment was against other party defendants, and the defendants in this action were no parties to or connected with the same.

Said evidence was received, subject to said objections and the decision of the court.

UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

Pleas before the judges of the circuit court of the United States in and for the northern district of New York, in the second circuit, at the March term of said court, A. D. 1870.

Present: Hon. Lewis B. Woodruff, judge.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, at the March term of said circuit court, A. D. 1870, to wit, and of the 20th day of June, A. D. 1870, came Nathan C. Russell, by H. E. Smith, his attorney, and brought into said court his certain declaration against Isaac V. Place and John W. Place, which said declaration was and is in the words and figures following, to wit:

46 United States circuit court for the northern district of New York, in the second district.

NATHANIEL C. RUSSELL *against* ISAAC V. PLACE AND JOHN W. PLACE.	Of the 20th day of June, 1870, as yet of the March adjourned term in the year 1870.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Nathaniel C. Russell of Johnstown, in the county of Fulton, and State of New York, a citizen of said State, and of the United States, plaintiff in this suit, by Horace E. Smith, his attorney, comes into this court, according to the practice thereof, and complains of Isaac V. Place and John W. Place, of Johnstown aforesaid, within said northern district of New York, citizens of said State, and of the United States, defendants in this suit, of a plea of trespass on the case—

For that whereas, the plaintiff was the original and first inventor and discoverer of a new and useful improvement in the preparation and

treatment of leather, in the letters-patent hereinafter mentioned and fully described, the same being a new and useful improvement in the treatment of leather, which was not known or used before his said invention and discovery, and which was not, at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance, nor patented, printed, or published in any foreign country; and the plaintiff, being so as aforesaid the inventor and discoverer thereof, and being also a citizen of the United States, on the seventeenth day of August, one thousand eight hundred and sixty-nine, upon due application therefor, did obtain certain letters-patent therefor under the seal of the Patent-Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid.

That thereafterwards, on the first day of February, one thousand eight hundred and seventy, said letters-patent having been duly surrendered by the plaintiff to the Commissioner of Patents, and cancelled, and a new patent for the improvement aforesaid ordered to be issued upon an amended specification, in accordance with the statute of the
47 United States, the plaintiff did, upon a full compliance with all the provisions of law in such cases made and provided, obtain certain other letters-patent of the United States for said new and useful improvement in the treatment of leather, in due form of law, under the seal of the Patent-Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was granted and secured to him, his heirs, executors, administrators, and assigns, for the term of fourteen years from and after the seventeenth day of August, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention and improvement, as by the said letters-patent in court to be produced will fully appear.

And the plaintiff further says that, from the time of the granting to him of said letters-patent last aforesaid, hitherto, he has made, used, and vended to others to be used, the said invention and improvement, to his great advantage and profit, and that the said exclusive right has been and is of great value to him, to wit, of the value of fifty thousand dollars. Yet the said defendants, well knowing the premises, but contriving and wrongfully intending to injure the plaintiff and to deprive him of the profits, benefits, and advantages which he might and otherwise would have derived and acquired from the making, using, exercising, and vending of the said invention, and without the consent and allowance and against the will of the plaintiff, have on divers days and times, since the first day of February, one thousand eight hundred and seventy, and before the commencement of this suit, at Johnstown aforesaid, and divers other places in said northern district of New York, made and used the said invention and improvement so patented as aforesaid, and caused the same to be made and used by others, in violation and infringement of the exclusive right so secured to the plaintiff by said letters-patent as aforesaid, and contrary to the form of the statute of the United States in such case made and provided, whereby the plaintiff has been greatly injured and deprived of great profits and advantages, which he might and otherwise would have derived from said invention, and has sustained actual damage to the amount of two thousand dollars, and by force of the statute aforesaid an action has accrued to him to recover the said actual damage, and such additional amount,

not exceeding in the whole three times the amount of such actual damage, as the court may see fit to order and adjudge, together with costs; yet the said defendants, though requested, have never paid
48 the same, or any part thereof, to the plaintiff, but have refused, and yet refuse so to do, to the damage of the plaintiff of three thousand dollars; and therefore he brings his suit, &c.

HORACE E. SMITH,
Plaintiff's Attorney, Johnstown, N. Y.

And afterwards, and on the 9th day of July, A. D. 1870, the said defendants appeared in said action by James M. Dudley, their attorney, and filed their plea and notice to the said declaration of the said plaintiff; which said plea and notice was and is in the words and figures following, to wit:

United States circuit court for the northern district of New York, second circuit.

ISAAC V. PLACE AND JOHN W. PLACE } *ads.* NATHAN C. RUSSELL. }

NORTHERN DISTRICT OF NEW YORK, *ss:*

And the said Isaac V. Place and John W. Place, defendants in this suit, by James M. Dudley, their attorney, come and defend the wrong and injury when, etc., and say that they are not guilty of the said supposed grievances, above laid to their charge, in manner and form as the said plaintiff hath above thereof complained against them, etc., and of this the said defendants put themselves upon the country, and the said plaintiff doth the like, etc.

JAMES M. DUDLEY,
Defendant's Attorney.

And it is suggested to the court now here that the defendants give the following notice in writing of special matter to the plaintiff thirty days before trial, under section 15 of the act of Congress, passed July 4th, 1836, entitled, "An act to promote the progress of the useful arts; and to repeal all acts, and parts of acts, heretofore made for the purpose."

Notice of special matter.

First. SIR: Take notice of the act of the Congress of the United
49 States, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," passed July 4th, 1836, and of the 15th section of said act, and take notice that under the provisions of said act the above-named defendants, under the general issue above pleaded in this suit, will prove upon the trial of this cause, in bar of the plaintiff's action, that the said plaintiff was not the original or first inventor or discoverer of the supposed new and useful improvement in the preparation and treatment of leather, etc., in the declaration in this suit mentioned, and therein alleged to have been secured to said plaintiff in and by the letters-patent in the said declaration mentioned and referred to.

Second. And the said defendants will further prove upon said trial, as aforesaid, that the same principle was known to, and had been previously combined and invented and discovered by, Philander Heacock, now deceased, who resided in the town of Johnstown, and county of

Fulton, in the State of New York, and by the defendant Isaac V. Place, who resides at the village of Gloversville, in the town and county last above mentioned, and by George W. Gillett, who resides at Gloversville aforesaid, and that the same was known to and combined by the said Philander Heacock as early as the year 1840, and was known to and combined by the said Isaac V. Place as early as the year 1845; and that the same was known to and combined by the said George W. Gillett as early as the year 1864.

Third. And the said defendants will further prove upon said trial, as aforesaid, that what is claimed in said declaration and in said letters patent therein mentioned, and the specification thereto attached, as the invention of said plaintiff named in said declaration, was substantially and in principle known to Isaac V. Place, John W. Place, Joseph S. Heacock, Samuel Dodge, sen., James Kent, David Brower, George W. Gillett, Purdy Van Wort, all of whom reside in the village of Gloversville aforesaid, and also to Philander Heacock, now deceased, who in his life-time, and until his death, resided in the town of Johnstown, in said county of Fulton.

Fourth. And the said defendants will further prove upon said trial as aforesaid that the matter proves a thing patented in and by the letters-patent in said declaration mentioned was not first invented or discovered by or known to the said plaintiff, but the same was publicly known and used prior to the time when it is alleged by the plaintiff in this action the same was invented or discovered by him, and the defendants will prove that Isaac V. Place, John W. Place, George W. Gillett, Samuel Dodge, sen., James Kent, David Brower, Purdy Van Wort, Joseph S. Heacock, Lemuel Heacock, Philander Heacock, David Heacock, Willard J. Heacock, all of whom reside in the town of Johnstown, in said county of Fulton, and State of New York, possessed such prior knowledge of the said thing, matter, or process mentioned as aforesaid in said declaration and in said letters-patent, and that the same was in public use and on sale anterior to the said supposed discovery or invention thereof by the said plaintiff, and for more than two years prior to the plaintiff's application for said patent.

Fifth. And the said defendants will further prove upon said trial as aforesaid that the descriptions and specifications and the amended description and specification filed by the plaintiff, contains more than is necessary to produce the described effect; which addition was made for the purpose of deceiving the public.

Sixth. And the said defendants will further prove upon the trial as aforesaid, by Samuel Dodge, senior, George W. Gillett, David Heacock, Philander Heacock, Joseph S. Heacock, Isaac V. Place, John W. Place, James Kent, David Brower, Purdy Van Wort, John Stewart, David Steward, Lemuel Heacock, Willard J. Heacock, and others, all of whom reside in the town of Johnstown, in said county of Fulton, that they severally knew of the use of said thing, process, invention, or discovery, or substantially the same as the alleged invention or discovery of the said plaintiff, and the same, or substantially the same, was used by them severally prior to the alleged invention or discovery thereof, and for more than two years anterior to the alleged invention or discovery thereof by the plaintiff, and prior to his alleged application for a patent therefor.

And that the same, or substantially the same, had been and was in public use, with the consent and allowance of the plaintiff, for more than two years before said plaintiff alleged application for the patent aforesaid.

And that the said process or thing alleged to have been patented, or substantially the same, had in fact been in public and common use by the persons above named and a great many others, in the town of Johnstown aforesaid, for twenty years and upwards, and was well known to and used by persons engaged in the business of dressing and preparing skins for the purpose of manufacturing gloves, &c., for the time aforesaid.

Dated July 8th, 1870.

JAMES M. DUDLEY,
Defendant's Attorney.

51. And thereupon the issue above joined came on to be tried at the October term of said court, A. D. 1870, before the Hon. Lewis B. Woodruff, judge, and a jury, and the jurors summoned to try the said issue, being empanelled and sworn, after hearing the evidence offered in said cause, do say that they find a verdict in favor of plaintiff, and assess the damages at ($700) seven hundred dollars.

Whereupon it was ordered that defendants have forty days to make case and bill of exceptions, and plaintiff same time to make amendments thereto, and in the mean time a stay of proceedings. Mr. Smith, plaintiff's attorney, moved to increase verdict by trebling damages.

Court held motion under consideration, and the said causes *was* continued down to the October stated term of said circuit court, held at the city-hall in the city of Albany on the 2d Tuesday of October, A. D. 1871, at which time an order was entered granting a new trial unless plaintiff remit the excess, and in case the plaintiff do so remit, to deny the motion for a new trial and award judgment for the plaintiff for twelve hundred dollars damages and costs of suit.

At an adjourned stated October term of the United States circuit court for the northern district of New York, second circuit, held at the chambers of the Hon. Lewis B. Woodruff, circuit judge, on the 21st day of October, 1871.

Present: Hon. Lewis B. Woodruff, circuit judge.

United States circuit court, northern district of New York.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

After argument, and decision of a motion for a new trial on a case in the above-entitled causes, the defendant make application for leave to turn said case into a bill of exceptions or special verdict; and after hearing Matthew Hale, of counsel for defendants, in favor of said application, and H. E. Smith, of counsel for plaintiff, in opposition thereto, ordered that said leave be denied.

L. B. WOODRUFF,
Circuit Judge.

52 United States circuit court, northern district of New York, second circuit.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

A verdict having been rendered in this cause in favor of the plaintiff

for seven hundred dollars damages, and a motion thereupon made by the defendants for a new trial, on the ground, among other things, of excessive damages, and also a motion made by the plaintiff for treble damages, and the court, upon argument and consideration of said motions, having held that said damages were excessive, and decided to grant a new trial unless plaintiff remit the excess, and in case the plaintiff do so remit, to deny the motion for a new trial and award judgment for the plaintiff for twelve hundred dollars damages, and costs of suit, and the plaintiff consenting to remit in accordance with the views of the court: It is hereby stipulated that, without filing and entering formal remittitur and orders, judgment be entered and perfected in this cause in favor of the plaintiff, and against the defendants therein, for twelve hundred dollars damages, with costs of suit, to be taxed by the clerk, and that upon filing this stipulation the clerk be authorized to enter and perfect judgment accordingly.

Dated Johnstown, N. Y., October 28th, 1871.

H. E. SMITH,
Attorney for Plaintiff.
JAMES M. DUDLEY,
Defendants' Attorney.

Wherefore it is considered that the said plaintiff, Nathan C. Russell, do recover against the said defendants, Isaac V. Place and John W. Place, the sum of twelve hundred dollars, besides costs, taxed at one hundred and twenty-nine dollars and forty-six cents, which in the aggregate amounts to thirteen hundred and twenty-nine dollars and forty-six cents, and that execution issue therefore.

Judgment signed this 4th day of November, 1871.

CHARLES MASON, *Clerk.*

53 UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that the foregoing is a true and correct copy of the judgment-record in the above-entitled cause, as filed in my office November 4, 1871. Witness my hand and official seal, at my office in Utica, this 10th day of April, A. D. 1873.

[L. S.] CHARLES MASON, *Clerk.*

Circuit court of the United States for the northern district of New York.

Opinion.

NATHAN C. RUSSELL *against* ISAAC V. PLACE ET AL. } Motion by defendant for a new trial.

Mr. Matthew Hale, Mr. James M. Dudley, for the defendants.
Mr. Horace E. Smith for the plaintiff.

WOODRUFF, J.:

No exception was taken to any ruling of the court upon the trial, or to the charge to the jury. The motion, therefore, so far as it involves the proceedings on that trial, rests upon that discretion which governs the court on such motions.

1st. The motion is urged upon the ground that the verdict is against the law and the evidence bearing on the right of recovery.

2d. The damages found for the plaintiff ($700) are excessive, not warranted by the evidence, and that there was no proof of actual damage.

3d. The defendants produce affidavits in proof of the further ground that they have newly-discovered evidence, which would have affected the result.

It appears by the defendants' affidavits that the ruling of the court, in the charge, that the use of heat in applying "fat liquor" to bark-tanned sheep or lamb skins was an essential part of the patented invention, as the same was claimed in the specification, was made by the ex-
54 press request of the defendant, and that view of the patent was, according to the minutes of the trial, earnestly insisted on by their counsel. They do not even now insist that it was erroneous.

Whether correct or not, it did not prejudice them, but narrowed the plaintiff's chance of recovery, and drove him to satisfy the jury that the defendants had injured the patent under that construction.

On this motion, therefore, the defendants are not at liberty to claim, if they would, that there was any error in complying with their request or yielding to the argument of their counsel, and the questions whether the mere use of "fat liquor," without any other ingredients, without heat, was patentable, or whether such use by the defendants was an infringement of the patent, are wholly immaterial.

I am confirmed by further reflection and examination in the proposition stated to the jury that the terms and construction of the specification and claim do not require that the "fat liquor" should be applied to leather while heated to the boiling-point, and assuming, as I must on this motion, that the other questions in controversy were properly submitted to the jury, they have found that the employment of heated fat liquor in the treatment of skins, substantially as described in the patent, was not in public use nor known before the invention of the plaintiff, and that in fact he was the first inventor, and also that the defendants had infringed the patent by the use of the plaintiff's invention.

On a review of the evidence, I think the verdict is not without evidence to support it, and is not against the weight of the evidence. On the contrary, the opinion I had at the close of the trial, that the testimony warranted the verdict in all these respects, is confirmed.

Undoubtedly fat liquor had been employed before to soften leather, and experiments had been made with that, and with that in connection with other means to make bark-tanned skins suitable for gloves, etc., but there was much foundation for the inference that the results were wholly imperfect and unsatisfactory, and that until the plaintiff succeeded the art was substantially unknown.

Undoubtedly the jury discredited some of the testimony given in the part of the defendant. The witnesses were before them, and their appearance and manner of testifying was in some instances liable to criticism, and there was contradiction and conflict. The great fact that while bark-tanned skins had been used for many years for coarse gloves, and it had long been sought and desired to make them suitable for more general use, the invention claimed by the plaintiff had wrought
55 a great change, by furnishing means for preparing them suitably for such general use, and had very largely brought them into such use, was no doubt deemed by the jury to weigh largely against testimony which manifestly came from persons who were either rival manufacturers or testified under the influence of bias and partiality.

My own conviction was then and still is that the verdict was just, and that the plaintiff and his invention were passing through an ordeal which

commonly awaits any inventor and invention that affect large and influential rival interests and tempt to infringment.

The alleged newly-discovered evidence does not present any just claim to consideration. It bears mainly upon the very questions contested on the trial, the novelty and utility of the invention. Indeed it bears on the question of utility, if it contains any point which was not already testified to. It is therefore cumulative. The facts proposed to be testified to are not, even in the aspect in which they are now urged, such as (under the construction of the patent given in the trial) would probably affect the verdict, and the conclusion that reasonable diligence would not have produced the same witnesses, if deemed material, is not warranted.

The proof of damages sustained by the plaintiff did not, I think, justify so large a verdict. Although the action is in no form tort, I think the verdict should be for actual damages only. Where the circumstances of the case make it just and proper, the court are authorized to award in the judgment not exceeding three times the actual damages found by the jury, and this furnishes ample opportunity to the defendant to obtain whatever greater sum the court may deem reasonable; but the duty of the jury was to find the actual damages, and the burthen was upon the plaintiff to establish those damages by proofs.

Yielding full weight to the presumption that, in a community where the improved leather was in great use and demand, the plaintiffs would have realized the profit of preparing the skins on an equal number of skins to those which the infringing defendant prepared by the use of the invention, the case on the proof stands thus:

Taking the testimony most favorably for the plaintiff, the profits he lost was $\$1.87\frac{1}{2}$ on each dozen of skins. The defendant, on his estimate of the quantity he manufactured after the patent was re-issued, made not exceeding 300 doz. The plaintiff's loss in this most favorable view of the evidence did not exceed five hundred and sixty-two $\frac{50}{100}$ dollars.

I apprehend, however, that this does not necessarily require that
56 a new trial should be granted. The plaintiff may, if he sees fit, remit the excess. Besides this, where the court has power and are called upon to grant treble damages, this excess may be considered, and, in the discretion of the court, the error be fully corrected by such enhancement of damages as may seem just to indemnify the plaintiff for the expenses of prosecution; especially where, as in this case, the infringement seems deliberate and intentional, though it may be with an erroneous estimate of the plaintiff's rights. The plaintiff seeks a reasonable increase of the sum found in the verdict, and I think it is a proper case for such an allowance.

It is not reasonable that an inventor of a useful improvement should be compelled to spend his means in protecting himself without indemnity, and so practically lose the benefit of the invention which the law is designed to secure to him.

I am disposed to award judgment for twelve hundred dollars and costs of suit; but, if the defendant prefers that course, and that the record may conform to my views of the evidence, the plaintiff may first be required to remit the excess before mentioned or submit to a new trial, and the order of the court thereupon will award him judgment as just stated.

UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that the fore-

going is a true and correct copy of Woodruff's opinion, as filed in my office Oct. 10, 1871.

Witness my hand and official seal at my office in Utica this 23d day of Oct., A. D. 1871.

[L. S.] CHARLES MASON, *Clerk.*

It is stipulated that the grounds of objection to any question or evidence need not be stated by either party before the examiner, and that all proper grounds thereof may be open upon the hearing.

Plaintiff now offers in evidence a judgment-record in this court in a suit at law for an infringement of the patent aforesaid, in which this complainant is plaintiff and Albert Klein defendant, together with all pleadings, records, papers, and proceedings therein.

To which evidence the defendant's counsel duly objects. Said evidence was received subject to said objection and the decision of the court.

57 UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

Pleas before the judges of the circuit court of the United States of America in and for the northern district of New York, in the second circuit, at the March term of said court, A. D. 1870.

Present: Hon. Lewis B. Woodruff, judge; Augustus A. Boyce, clerk.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, at the March term of said circuit court, A. D. 1870, to wit, and of the 20th day of June, A. D. 1870, came Nathan C. Russell, by H. E. Smith, his attorney, and brought into said court his certain declaration against Albert Klein, which said declaration was and is in the words and figures following, to wit:

United States circuit court for the northern district of New York, in the second circuit.

NATHANIEL C. RUSSELL *against* ALBERT KLEIN. } Of the 20th day of June, 1870, as yet of the March adjourned term, in the year 1870.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Nathaniel C. Russell, of Johnstown, in the county of Fulton and State of New York, a citizen of said State and of the United States, plaintiff in this suit, by Horace E. Smith, his attorney, comes into this court according to the practice thereof and complaint of Albert Klein, of Johnstown aforesaid, within said northern district of New York, a citizen of said State, and of the United States, defendant in this suit, of a *peace* of trespass on the case:

For that whereas the plaintiff was the original and first inventor and discoverer of a new and useful improvement in the preparation and treatment of leather in the letters-patent hereinafter mentioned and fully described, the same being a new and useful improvement in the treatment of leather which was not known or used before his said in-

58 vention and discovery, and which was not at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance, nor patented, printed, or published in any foreign country, and the plaintiff being so as aforesaid the inventor and discoverer thereof, and being also a citizen of the United

States, on the seventeenth day of August, one thousand eight hundred and sixty-nine, upon due application therefor, did obtain letters-patent therefor, under the seal of the Patent-Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid.

That thereafterwards, on the first day of February, one thousand eight hundred and seventy, said letters-patent having been duly surrendered by the plaintiff to the Commissioner of Patents, and cancelled, and a new patent for the improvement aforesaid ordered to be issued upon an amended specification, in accordance with the statute of the United States, the plaintiff, upon a full compliance with all the provisions of law in such cases made and provided, did obtain certain letters-patent of the United States for said new and useful improvement in the treatment of leather, in due form of law, under the seal of the Patent-Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was granted and secured to him, his heirs, executors, administrators, and assigns for the term of fourteen years from and after the seventeenth day of August, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention and improvement as by the said letters-patent in court to be produced will fully appear.

And the plaintiff further says that from the time of the granting to him of said letters-patent last aforesaid, hitherto, he has made, used, and vended to others to be used, the said invention and improvement, to his great advantage and profit, and that the said exclusive right has been and is of great value to him, to wit, of value of fifty thousand dollars.

Yet the said defendant, well knowing the premises, but contriving and wrongfully intending to injure the plaintiff, and to deprive him of the profits, benefits, and advantages which he might and otherwise would have derived and acthered from the making, using, exercising, and vending of the said invention, and without the consent and allowance, and against the will, of the plaintiff, has on divers days and
59 times since the first day of February, one thousand eight hundred and seventy, and before the commencement of this suit, at Johnstown aforesaid, and divers other places in said northern district of New York, made and used the said invention and improvement, so patented as aforesaid, and caused the same to be used by others in violation and infringement of the exclusive right so secured to the plaintiff by said letters-patent as aforesaid and contrary to the form of the statute of the United States in such case made and provided, whereby the plaintiff has been greatly injured and deprived of great profits and advantages which he might and otherwise would have derived from said invention, and has sustained actual damages to the amount of one thousand dollars, and by force of the statute aforesaid an action has accrued to him to recover the said actual damages, and such additional amount, not exceeding in the whole three times the amount of such actual damages, as the court may see fit to order and adjudge, together with costs; yet the said defendant, though requested, has never paid the same or any part thereof, to the plaintiff, but has refused, and yet refuses so to do, to the damage of the plaintiff of two thousand dollars, and therefore he brings his suit, &c.

HORACE E. SMITH,
Plaintiff's Attorney, Johnstown, N. Y.

And afterwards, on the 8th day of July, A. D. 1870, the said defendant appeared in said action, by H. S. Parkhurst, his attorney, and filed his plea and notice to the said declaration of the said plaintiff, which said plea and notice was and is in the words and figures following, to wit:

United States circuit court for the northern district of New York, in the second circuit.

NATHAN C. RUSSELL
against
ALBERT KLEIN.

NORTHERN DISTRICT OF NEW YORK, *ss:*

And the said Albert Klein, defendant in the suit, by H. S. Parkhurst, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of said supposed grievances above laid
60 to his charge, in manner and form as the said plaintiff hath thereof complained against him, &c., and of this the said defendant puts himself upon the country, and the said plaintiff doth the like, &c.

And it is suggested to the court, now here, that the defendant gives the following notices in writing of special matter to the plaintiff, thirty days before trial, under section 15 of the act of Congress, passed July 4th, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose."

First. Notice of special matter.

Take notice that the above-named defendant will prove upon the trial of this cause, in bar of the said plaintiff's action, that the said Nathan C. Russell was not the original or first inventor of a new and useful improvement in the preparation and treatment of leather described in letters-patent issued to the said plaintiff and dated August 17th, 1869.

And which said letters-patent were surrendered and cancelled, and a new patent for the improvement aforesaid was issued upon an amended specification, and which said last letters-patent bear date February 1st, 1870, and which said improvement consisted of making bark-tanned sheep-skin leather soft and pliable by reason of using a compound of which fat-liquor is the base, more fully described in said letters-patent, by reason of which treatment the said leather was rendered more suitable for making into gloves, and a variety of other uses, for which said leather was not fit before said treatment.

And the said defendant will further prove upon such trial as aforesaid that the said principle was known to and had been previously invented by Isaac V. Place and Philander Heacock, said Isaac V. Place resides at Gloversville, in the State of New York, said Philander Heacock is now deceased, and that the same was known to and combined by said Isaac V. Place and Philander Heacock as early as the year 1845.

And the said defendant will further prove upon said trial as aforesaid that what is claimed in said declaration and in said letters-patent therein mentioned, and the specifications and drawings thereto attached, as the invention of said plaintiff's incurred in said declaration, was substantially and in principle known to Philander Heacock, now deceased, and formerly of the town of Johnstown and State of New York, Isaac V. Place, John W. Place, James Kent, David Brower, Purdy Van Wort, and Samuel Dodge, sen., of Goversville, in the State of New York.

61 And the said defendant will further prove upon said trial as aforesaid that the thing patented in and by the letters-patent was not first invented by or known to said Nathan C. Russell, but the same was publicly known and used prior to the time when it is alleged in this action the same was invented by him.

And the defendant will prove that Isaac V. Place, James Kent, Joseph Heacock, and John Stewart, who reside in the town of Johnstown and State of New York, possessed such prior knowledge of the said thing mentioned as aforesaid in said declaration, and that said thing was in public use anterior to the said supposed discovery or invention thereof by said Nathan C. Russell.

Second. Please take notice that on said trial of this cause the defendant will prove by Isaac V. Place, John W. Place, James Kent, Joseph Heacock, George Gillett, David Brower, Purdy Van Wort, John R. Berry, Fred E. Hotchkiss, Henry C. Day, and Samuel Dodge, all of Gloversville, of the State of New York, and others, that they knew of the use of said thing, or substantially the same, as the alleged invention of said Nathan C. Russell, and the same or substantially the same was used by Isaac V. Place, John W. Place, George Gillett, and Purdy Van Wort prior to the alleged invention thereof, and the same was previously to the time when it is claimed the plaintiff invented or discovered the same in public use with his consent and allowance and subsequent to the time when it is claimed he invented or discovered the same.

HIRAM S. PARKHURST,
Defendant's Attorney.

And thereupon the issue above joined came on to be tried at the March adjourned term of said circuit court, held at the city hall in the city of Utica on the 3d Tuesday of March, A. D. 1871, before the Hon. Lewis B. Woodruff, judge, and a jury, and the jurors summoned to try the said issues being empannelled and sworn, after hearing the evidence offered in said cause do say that they find a verdict in favor of plaintiff, and assess the damages at one hundred and forty-two (142) dollars and fifty cents.

Whereupon it was ordered that defendant have thirty days to make and serve case or exceptions, and plaintiff thirty days to prepare amendments. Other proceedings to be stayed until the end of next June term.

And the said cause was continued down to the June term of said circuit court, held at the village of Canandaigua on the 3d Tuesday of June, A. D. 1871, Hon. Lewis B. Woodruff presiding judge, at
62 which time and place the said cause came on for a hearing upon a motion for new trial on case and exceptions, and because the said judge now here is not yet advised what judgment to give, the said cause is continued until the second Tuesday of October, of the October term of said court, A. D. 1871, at the city hall in the city of Albany, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereon.

At which said last-mentioned day before the said judge, at the place last aforesaid, come the parties aforesaid by their respective attorneys aforesaid, and an order is entered in the words and figures following, to wit:

At a stated term of the circuit court of the United States of America, for the northern district of New York, in the second circuit, held at the

city hall in the city of Albany on the 2d Tuesday of October, in the year of our Lord one thousand eight hundred and seventy-one:

Present: The Hon. Lewis B. Woodruff, judge.

NATHAN C. RUSSELL
vs.
ALBERT KLEIN.

This cause having been heretofore heard on argument by counsel for the respective parties on motion for a new trial, and the court having considered the same, ordered that the motion on a new trial be and the same is hereby denied with costs.

Wherefore it is considered that the said plaintiff, Nathan C. Russell, do recover against the said defendant, Albert Klein, the sum of one hundred and forty-two (142) dollars and fifty (50) cents, besides costs taxed at two hundred and eighty-one (281) dollars and ninety-six (96) cents, which in the aggregate amounts to four hundred and twenty-four (424) dollars and forty-six (46) cents; and that execution issue therefor.

Judgment signed the 18th day of March, A. D. 1872.

CHARLES MASON, *Clerk.*

UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that
63 the foregoing is a true and correct copy of the judgment recorded in the above-entitled cause, (except the order granting leave to defendants to turn case into a bill of exceptions, and the bill of exceptions,) as filed in my office March 18, 1872.

Witness my hand and official seal at my office in Utica this 10th day of April, A. D. 1873.

[L. S.] CHARLES MASON, *Clerk.*

Circuit court of the United States for the northern district of New York.

Opinion.

NATHAN C. RUSSELL
vs.
ALBERT KLEIN.
Motion by the defendant for a new trial.

Mr. H. E. Smith for the plaintiff.
Mr. Matthew Hale for the defendant.
Woodruff, J.:

In connection with the like motion in Russell v. Place argued at the same term, I have considered the various points made by the counsel for the defendants on the argument and the exception taken on the trial, and am of opinion that there is no sufficient reason for disturbing the verdict. The conflict of evidence upon the questions of fact is great and made it a very proper case for submission to the jury. The impression on my own mind after a careful examination of the testimony is that the verdict is right and the plaintiff is in fact the inventor of a new and useful process secured to him by his patent, and that the defendant is a willful and deliberate infringer of his rights.

On the construction of the patent and specifications and claims, the learned district judge before whom, sitting in the circuit, this case was tried, expressed an opinion different from the construction given on the trial of Russell vs. Place. There the defendant insisted that the use

of heat in the treatment of skins was an essential part of the patented process, and I yielded to the claims so urged and so instructed the jury.

No such claim was made by the defendant in this case, and the judge expressed the contrary opinion, but this instruction was not excepted to by the defendant, and he is not as matter of right entitled to
64 question the correctness of the charge to the jury on that point.

In that particular the question on a motion for a new trial is not simply whether the instruction was correct. If it appeared to me to be erroneous and yet it was clear that it worked no injustice to the defendant it would be no reason for granting a new trial. I do not even now understand the defendant's counsel to insist that it was erroneous. The defence is put upon other grounds of attack upon the patent and the claim of the plaintiff to have first invented the process. The reason why the instruction, whether it was correct or not, wrought no injustice is that the plaintiff's charge of infringement was wholly confined to the use of his process, including heat, and there was no pretence of claim against the defendant of violating the plaintiff's rights by using fat liquor without heating it; nor was there any proof of any use by the defendant since the plaintiff's process was patented otherwise than by heating the ingredients in the compound employed. Nor was the verdict for any other use or for any treatment of leather except by first heating the fat liquor and other ingredients used.

So far therefore as this trial and verdict are concerned, and upon the actual state of the plaintiff's allegations and proof on the trial, the question whether the use of heat is an essential part of the process or not is purely speculative and immaterial.

The exception to the reception of evidence became also wholly immaterial since the evidence itself led to nothing. The purpose was to show that the defendant's witnesses were in a combination to defeat the plaintiff's patent and to share the expense. This, if proved, might affect their credibility, and the moment it appeared that the witness did not know who signed it, it became wholly irrelevant and harmless. Doubtless the judge would have struck it out or so instructed the jury if desired. But as to its admissibility and therefore the propriety of allowing the plaintiff to prove such a combination among the defendant's witnesses if he could, I have no doubt, and it was one of those collateral matters arising incidentally in the progress of a trial, forming no part of the merits of a controversy, but going to the credit of a witness called by the defendant, which may be proved by the witnesses themselves although no notice to produce has been given to any one. To whom shall such notice be given? There is no presumption that the defendant has possession of such a paper; nor can the plaintiff know in advance who will be called by the defendant to testify.

On the principal questions, as already observed, I think the in-
65 structions of the court to the jury were correct, or at any rate as favorable to the defendant as he had a right to require, and that the special instructions sought were charged as fully as the law would allow.

The motion for a new trial must be denied with costs.

Ordered accordingly.

UNITED STATES CIRCUIT COURT,
Northern District of New York, ss:

I, Charles Mason, clerk of the said court, do hereby certify that the

foregoing is a true and correct copy of Woodruff's opinion, as filed in my office Oct. 10, 1871.

Witness my hand and official seal at my office in Utica this 23d day of Oct., A. D. 1871.

[L. S.] CHARLES MASON, *Clerk.*

Stipulated that the subpœna were served on the defendants in this suit on the first day of February, 1872.

Deposition of witnesses produced and sworn and examined in the above-entitled cause on the part of the plaintiff.

JOHN FULTON, a witness produced, sworn, and examined on the part of the plaintiff, says:

I reside in Gloversville, in Fulton County, N. Y. I am a son-in-law of plaintiff. I am connected with plaintiff in the manufacture of mittens and gloves, and have been since the winter of 1866. I have read the letters-patent of plaintiff for preparing leather, and know the process. I have prepared skins by that process, according to the patent, since 1866. I began a few months before the patent was issued. I have prepared thousands of dozens by that process. They are bark-tanned lamb and sheep skins. These skins are not suitable in their bark-tanned condition for mittens and gloves; they are too hard—very hard, harsh, and full of squeak. By treating them by this process it softens them up, makes them pliable and suitable for gloves—for all kinds of gloves; will make a very nice and fine glove. It removes the squeak. Those bark-tanned lamb and sheep skins were not used to any extent before this process came into use. They were used for a harvest-mitten—coarse, cheap article. Since the patent, these skins are very extensively used; cannot tell how extensive. Gloversville and vicinity is, I believe, the principal manufacturing place of gloves and mittens in the United States. There are something over one hundred
66 manufactories in the village of Gloversville, beside quite a number who manufacture having no shops. The kind of skins used in the manufacture of gloves and mittens are very numerous, and are imported from all parts of the world. Bark-tanned sheep-skins in that state is cheap compared with other material for gloves and mittens. They are plenty at present compared with other material.

Q. Does the patented process benefit the bark-tan'ed sheep and lamb skins for gloves and mittens; and how much in value per dozen skins?

(To which question defendant's counsel duly objects.)

A. At least two dollars per dozen skins. At the price goods are fetching to-day it increases their value more, over and above goods made of skins not so prepared.

Q. State what you mean by skins not so prepared.

(To which question defendant's counsel duly objected.)

A. I mean bark-tanned skins as they come from the tannery. The expense of preparing the skins by this patent process is twelve and half cents a dozen, including labor and material. There is a large demand for gloves and mittens made of skins made by this process. There were no gloves or mittens of this quality manufactured of bark-tanned skins before this process, to my knowledge. Before the patent was issued we made some gloves and mittens in this way, while experimenting. I was present at a trial at Albany in the case of this plaintiff against Place for an infringement of this patent, in October, 1870.

Q. Will you state whether Samuel Dodge, senior, one of the defendants in this suit, was present and testified as a witness for the defendant on that trial?

(To which defendant, by his counsel, duly objected.)

A. He was there, and did testify as such witness. I was also present at a trial at Utica in a suit of this plaintiff against Albert Klein; was defendant for infringement of this patent. This was in March, 1871.

Q. Please state whether Samuel Dodge, senior, one of these defendants, testified on that trial as a witness for the defendants.

(To which the defendant's counsel duly objected.)

A. He did.

The defendants in the two suits mentioned, and the defendants in this suit, all reside in Gloversville.

On his cross-examination by defendant's counsel he further testified: My age is thirty-four years. I commenced residing in Gloversville in 1865. Previous to that time I resided in Johnstown. I engaged in business with my father-in-law, the plaintiff, in 1866, in the winter; think about the first of March. Just previous to my removal from Johnstown to Gloversville I had been engaged in mercantile business
67 as a clerk. I had not prior to my removal in 1865, to Gloversville, been engaged in the dressing of skins. I had no experience or practical knowledge of the dressing of skins of any kind for the manufacture of gloves and mittens. I moved to Gloversville in October or November, 1865. After moving to Gloversville, I went to Saratoga to sell out a peet-bed for one Shultz. The first time I engaged in business at Gloversville was with my father-in-law, the plaintiff, in February or March, 1866. I have had experience in working bark-tanned sheep or lamb skins into leather for the manufacture of mittens and gloves first in 1866; cannot state the time nor the month, nor about the month; was in March or April of that year—I presume I had.

Q. At the time of your first experience in working or manufacturing bark-tanned sheep or lamb skins into leather for gloves and mittens, which you say was some time in the year 1866, what materials, if any, did you use in manufacturing such skins into leather?

A. I used fat liquor, but what other ingredients I don't know.

Q. At that time did you use any other ingredient with the fat liquor?

(To which plaintiff by his counsel duly objected.)

A. We used soap; I don't remember anything else, we used soft soap; this was put in the kettle and boiled. Also used salt; the salt was mixed in with the fat liquor and soap. I do not remember whether I used sal-soda at this time or not. We prepared it by putting the ingredients into a kettle, put it over the fire, heat it to a boil, then let it cool, or cool it with plain fat liquor, or liquor that had been heated and got cool, took it up in a pail, and with a brush applied it to both sides of the bark-tanned skins for the purpose of trying to get them soft and get the squeak out. After the skins were well saturated, I hung them out to dry; were staked, and then cut into gloves.

Q. Did that process make the leather suitable for gloves?

A. For some kinds of gloves. I think likely we did make this leather into gloves.

Q. Did you know positively whether you made the leather thus prepared into gloves?

A. Yes; we did.

Q. How many dozen of gloves did you make of leather thus prepared?

A. I cannot tell you; not but very few.
Q. State as near as you can the number of dozen.
A. Perhaps fifty dozen.
Q. What kind of gloves did you make?
A. Men's gauntlets.
Q. What did you do with the gloves when made?
A. Sold them there at our factory; sold to persons engaged in the sale of that kind of goods; I think we sold all to one firm—Petrie & Co., in New York City, wholesale merchants, I believe; I think these were sheep-skins—were large, heavy skins.
Q. Did you continue to use the same ingredients?
68 A. We used fat liquor, sal-soda, soap, and salt. I do not remember that we ever used any other ingredient or material; not to my knowledge. We did not continue to mix them together always. We sometimes used fat liquor with nothing in but salt, sometimes fat liquor and sal-soda. Sometimes used little, sometimes more; sometimes all these ingredients at a time. I am now speaking of the time of my first experiment clear through.
Q. Did you use these several ingredients in the manufacture of bark-tanned sheep and lamb skins into leather for gloves in the manner you have stated, from the time you have stated, as your first experience in the preparation of leather for the manufacture of gloves up to the present time?
A. Not in the same manner.
Q. How different?
A. Because up to the spring previous to the patent we were experimenting, and ask the question be repeated.
(Defendant's counsel objects to the answer, as not responsive to the question.)
A. Since the winter and spring previous to the issue of the patent we use fat liquor, salt, sal-soda, soap, and Venetian red mixed together. Have used it so ever since, except the Venetian red; that is only used for coloring.
Q. Did you not use fat liquor, sal-soda, salt, and soap mixed together at the time of your first experience in making bark-tanned sheep and lamb skins into leather for gloves in 1866?
A. No, sir; I am positive of that.
Q. What ingredients did you use together at any one time in 1866?
A. Fat liquor and salt at one time; at another, soap and fat liquor; and another, fat liquor, salt, and soap together. Used no sal-soda in 1866, and am not sure we used soap. In 1867 we used all these, fat liquor, sal-soda, soap, and salt mixed together in different ways.
Q. Did you, during the entire year of 1867, use fat liquor, sal-soda, soap, and salt all mixed together in making bark-tanned sheep and lamb skins into leather for mittens and gloves?
A. I think we did.
Q. How did you prepare these ingredients after mixing them for the leather?
A. We put them in a kettle and heated them.
Q. To what degree of heat?
A. I don't know.
Q. State whether it was to boiling-heat.
A. Yes, sir.
Q. What then did you do with the preparation?
A. I then applied it to the bark-tanned skins after first cooling it so I could work in it; I usually cool it by pouring in cold, fat liquor;

sometimes cool it with plain, cool liquor, raw, and sometimes with other boiled liquor, cold. We made gloves of the skins so prepared in 1867; made about three hundred dozen pairs of gloves, I think, that year, made of both sheep-skins and lamb-skins, men's wear, *gu*antlets, and a few button-tops. Some of them were consigned to Messrs. Petries,
69 of New York, commission-merchants; sold some to other parties; Petrie & Co. reported part of them sold; I saw their account of sales sold at various times; they did not name the parties to whom sold.

Q. What became of the gloves that had been consigned to Petrie & Co., in 1867, that were not sold by them that year?

(To which plaintiff's counsel duly objected.)

A. They were kept on hand and were carried over to 1868.

Q. Did you and plaintiff manufacture bark-tanned sheep and lamb skins into leather for mittens and gloves in the year 1868?

A. We did; all but 2 or 3 months in the winter.

Q. What did you use in 1868 in manufacturing skins into glove-leather?

(To which plaintiff's counsel objected.)

A. Fat liquor and sal-soda, sometimes together; sometimes fat liquor and salt alone; sometimes salt, sal-soda, soap, Venetian red, and fat liquor all mixed together. Put in a kettle, boil it to boiling-heat, and cool it in the same manner as in 1866 and 1867. We applied the liquor principally by the brush, sometimes by dipping skins into the liquor and leaving them in the tub sometimes an hour and sometimes half an hour and sometimes two hours. I cannot say that we always heated it to boiling-heat, but always heated it to boiling-heat or nearly so, when the other ingredients were in.

Q. Did the plaintiff and you prepare or manufacture bark-tanned sheep and lamb skins into leather for the manufacture of mittens and gloves during the years 1869 and 1870 at Gloversville?

A. We did.

Q. Did you use the same ingredients in so doing as you did in 1867 and 1868, as heretofore stated by you in your examination in this case?

A. We did.

Q. Did you apply them in the same manner as you did in 1867 and 1868?

A. We dipped them. Yes, we dipped them 1869; we might have used the brush some in the winter and spring of 1869, but I think not.

Q. Was the only difference in making the application this, that you dipped, or put the skins into the liquid, instead of applying the liquid to the skin with a brush?

A. I think it was.

Q. When did you first make the application by putting the skin into the liquor instead of applying it with the brush?

A. In the latter part of 1866; in 1866, I think the latter part of that year.

Q. In your examination in this case, when you have spoken of preparing skins by this process, what do you mean by process? Please state.

(Objected to by plaintiff's counsel.)

A. Essentially as described in the patent.

Q. Please specify by giving the particulars as to what you mean by process.

A. By the use of fat liquor applied to bark-tanned skins, as specified in the patent.

70 Q. State in detail, without reference to the patent, what you mean by process, as used by you in your testimony in this case.

(To which plaintiff's counsel duly excepted.)

A. I mean by the heating of fat liquor to or near a boiling-point, and saturate the bark-tanned skins on the same, when it is cooled to sufficient temperature to work it with naked hands.

Q. Do you mean by process, simple fat liquor alone, without any other ingredient or substance mingled with it?

(Objected to by plaintiff's counsel.)

A. I mean either with or without any other ingredient, if the fat liquor is heated.

Q. Does the fat liquor, if heated and applied to the bark-tanned sheep or lamb skins as stated by you, produce the same beneficial result or effect when applied alone that is produced by the fat liquor and other ingredients here'before mentioned by you, to wit, sal-soda, salt, and soap combined with it?

(To which plaintiff's counsel objected.)

A. It does, to a certain extent.

Q. Please explain what you mean by "a certain extent."

(Objected to by plaintiff's counsel.)

A. I mean it benefits them some.

Q. In what way?

A. It softens them some.

Q. Does not the application of fat liquor alone, if of sufficient strength, soften the leather and make it as pliable and suitable for gloves as it does when containing the other ingredients heretofore mentioned by you?

A. From my experience, it does not.

Q. Do the plaintiff and you always use the other ingredients mingled with fat liquor in preparing bark-tanned sheep and lamb skins for the manufacture of gloves?

A. I do not know how plaintiff does, but I do, and have always done so since 1866, more or less. I mean by that that I have at times used fat liquor alone from 1866 to the spring of 1869; may have used some alone since, but I think not.

Q. Do you mean that ever since the winter or spring of 1869 you have used fat liquor, sal-soda, salt, and soap mingled together?

A. Yes, sir.

Q. Have you not, since the winter or spring of 1869, in the manufacturing of these skins for gloves, used fat liquor alone?

(Objected to by plaintiff's counsel.)

A. No, sir; not that I remember.

Q. What have you used?

(Plaintiff's counsel objected.)

A. I used salt, soap, sal-soda, and fat liquor mingled together.

Q. Have you at all times since the winter or spring of 1869 used all these ingredients together?

I think I have.

71 Q. Since your connection with the plaintiff in business, who has had the chief charge in your business of preparing bark-tanned sheep or lamb skins for the manufacture of gloves by what you call the plaintiff's process?

A. Mr. Russell, the plaintiff, up to the winter or spring of 1869; but since that time I have had charge.

Q. Do you know, or are you able to state, what ingredients or materials

Mr. Russell used in preparing bark-tanned sheep and lamb skins for the manufacture of gloves up to the winter or spring of 1869?

A. I know some of them.

Q. State what you know on that subject.

A. I know he used fat liquor, soap, and salt, is all I can swear to positively.

Q. How did he prepare and use it prior to the winter and spring of 1869?

A. I could not tell you.

Q. Do you know what fat liquor is?

A. I think I do.

Q. Of what is it made?

A. Of oil, alkali, and water.

Q. What is used for the alkali?

(Objected to by plaintiff's counsel.)

A. Soda-ash and water.

Q. Where has this fat liquor, used by you and plaintiff in this business, been obtained?

A. From the different skin-mills in the vicinity of Gloversville.

Q. At the skin-mills where the different kinds of leather are manufactured for gloves?

A. Yes, sir.

Q. For what purpose do you use sal-soda to fat liquor?

(Objected to by plaintiff's counsel.)

A. I do not know.

Q. Do you know what sal-soda is made of, or how it is produced?

A. I do not.

Q. For what purpose do you mingle soap with the fat liquor?

(Objected to by plaintiff's counsel.)

A. For the purpose of feeding the leather.

Q. Please explain what you mean by "feeding the leather?"

A. By putting something of a substance into the skin to improve it; improve the feeling—improve by age.

Q. Do you know what soap is made of?

A. Yes, sir.

Q. Of what?

A. Is made of lye and grease.

Q. For what purpose do you apply salt?

(Objected to by plaintiff's counsel.)

A. To make the leather moist, and keep it sweet.

Q. Are you able to state the effect of fat liquor applied to bark-tanned sheep or lamb skins, either alone or with any or all the other ingredients mentioned by you, when heated to or near the boiling-point?

A. I think I am. If applied at boiling-heat it would spoil the skin. If near the boiling-heat, it might not spoil it, unless very near.

Q. Did you ever apply it when near boiling-heat?

A. I think I have.

Q. When so applied by you, what effect did it produce upon the skin?

A. I don't remember.

Q. Have you no idea what effect it produced?

(Objected to by plaintiff's counsel.)

72 A. I presume it would soften up the skin and made good leather of it, unless too near the boiling-point, then it would damage the skin.

Q. Do you know at what degree of heat this liquor can be applied to bark-tanned lamb and sheep skins without injuring the skins?

A. No, sir.

Q. In preparing bark-tanned sheep and lamb skins for leather for gloves and mittens, at what degree of temperature do you apply the liquor?

A. I do not know as I never tested it by a thermometer.

Q. How do you learn what you suppose to be a proper temperature of the liquor to be applied to the skins?

A. By putting my naked hands in it; by feeling.

Q. Do you ever apply it when it is so warm that you cannot hold your naked hand in it?

A. Yes, sir; I have applied it so.

Q. Do you usually apply it so?

A. We usually use it when one can work in it with the naked hands.

Redirect:

On his further direct examination on the part and in behalf of the plaintiff he further testified as follows, to wit:

Q. State, if you know, the date of the plaintiff's first patent for this invention.

(To which defendant's counsel objected.)

A. Dated the 17th day of August, 1869.

Q. State, if you know, about how long prior to that date was the application for that patent made.

(Objected to by defendant's counsel.)

A. If I remember right, five or six weeks.

Q. State whether what you did by way of preparing the leather for gloves and mittens prior to the date of plaintiff's first patent was under the direction of plaintiff or otherwise.

(Objected to by defendant's counsel.)

A. It was under plaintiff's direction; I am not a chemist. The knowledge I have of the use these ingredients and preparation of the leather is practical, not scientific.

Q. State what experiments, if any, the plaintiff made in the preparation of this leather and in the perfection of his alleged invention prior to his application for a patent.

(Objected to by defendant's counsel.)

A. He made a great many. He experimented with fat liquor, soap, heated together—sometimes more soap, sometimes less soap; sometimes with salt, soap, and fat liquor together, and try it on a few skins, or one skin or part of a skin, to see the effects; sometimes fat liquor alone heated; sometimes fat liquor and sal-soda, varying the quantities at different times to see the effect produced. That is the manner in which he experimented more or less up to the winter or spring of 1869. Was tried in a good many different forms and proportions; also varied
73 the temperature of the heating of the fat liquor; also tried cold fat liquor during that period. I do not remember whether he tried cold fat liquor with other ingredients. I do not know that I know all the experiments the plaintiff made. These experiments were continued down to the winter or spring of 1869. This mode of preparing skins and experiments were kept secret.

Q. State the difference, if any, between the leather produced by the use of fat liquor alone, heated and applied according to the specifications of the patent, and that produced by the fat liquor mixed with the other ingredients mentioned in the specification.

A. Substantially the same. The leather treated by fat liquor alone is not as good as the other. The gloves spoken of in my cross-examina-

tion as manufactured and sold by us prior to the winter or spring of 1869, were made of skins prepared by these experiments referred to.

Q. State whether plaintiff, during these experiments you speak of, secured a quality of leather as good and suitable for gloves as that produced by the patented process.

(Question waived.)

(Objected to by defendants' counsel.)

Q. What was the quality of the leather produced prior to the winter or spring of 1869 by these experiments, as compared with that produced by the patented process?

A. It was not near as good. During the years from 1866, the time I went in with plaintiff, down to the date of the first patent, Mr. Russell, the plaintiff, was engaged in the manufacture of mittens and gloves of other kinds as well as these experiments.

Q. State whether the gloves and mittens made from the leather produced by the experiments were coarse or fine, and how they would compare in quality with those made from leather produced by the patent process.

(Objected to by defendants' counsel.)

A. They were coarse, and were not near as good in quality as those manufactured from leather made by the patent process. In 1867 we used these different ingredients mentioned in the patents in different proportions, at different times, and in different manners; and that is the way and manner we used it during all the years prior to the winter or spring of 1869, except I do not remember that we used sal soda in 1866. During these years we also varied the length of time the skins were emersed, or the liquor applied to them. This process applied to the skin makes it elastic and tough as well as soft. These qualities are necessary to make a good glove, and cannot make good ones without it.

74 The bark-tanned lamb and sheep skins do not possess these qualities without subjecting them to this process—that is, I mean in the bark-tanned state.

Q. State, if you know, how the fat liquor is produced.

A. It is obtained in the process of dressing of deer, sheep skins, and other skins; what we term oil-dressed leather.

Q. Are what you term oil-dressed skins dressed or tanned from the raw in oil?

A. I believe they are.

After being subjected for a certain time to oil, are they put into a liquor of alkali and water?

(Objected to by defendants' counsel.)

A. They are.

Q. What is the next process? If you know, please state.

(Objected to by defendants' counsel.)

A. They are put into the stocks, scoured or milled up, as they call it. Is water run on, and that runs out, and that produces fat liquor. This is the kind of fat liquor spoken of by me on my cross-examination as used in preparing our leather. What is called scouring is included in this last process.

2d cross-examination:

On his recross-examination he further testified as follows, to wit:

Q. Did you make any experiments with fat liquor, or with fat liquor and the other ingredients, or any of them, mentioned by you, in preparing bark-tanned sheep or lamb skins for mittens and gloves prior to 1869, you yourself?

A. I do not remember that I did.

(Witness added [unless under the plaintiff.])

This last answer was objected to, by defendants' counsel, included in brackets.)

I did make experiments under the plaintiff prior to the spring of 1869; first made them in 1866. Mr. Russel fixed the liquors and I brushed it on the skins. I did not altogether know at that time what the liquor I brushed on was composed of. All I knew, it contained fat liquor. I experimented a number of times during the year 1866 under instruction of the plaintiff. I know we used soap, and I think salt, mixed in the fat liquor in 1866. I think I saw Mr. Russell mix it quite late in 1866; cannot say how many times; cannot say if more than once; that made pretty poor leather; yes, we heated it. We applied it to bark-tanned sheep-skins, may be lamb-skins too. I cannot say whether the fifty dozen gloves spoken of were made out of any of these skins.

Q. Did you experiment under plaintiff's instructions in 1867?

(Objected to by plaintiff's counsel.)

A. I presume I did.

Q. State what you done by plaintiff's direction or instruction in 1867 in the way of experimenting with fat liquor, &c.

(Objected to by plaintiff's counsel.)

75 A. I don't know as I remember. I think I brushed and dipped skins in liquor prepared by the plaintiff. I do not know whether I saw it prepared by plaintiff, but presume I did.

Q. State, if you know, what ingredients the liquor contained in 1867.

(Objected to by plaintiff's counsel.)

A. It contained soft soap, salt, and fat liquor.

Q. State, if you know, what ingredients the liquor used by plaintiff in 1868 contained.

(Objected to by p aintiff's counsel.)

A. Soft soap, salt, sal-soda, and, I think, Venetian red mixed with fat liquor.

Q. Was it the same in 1869 and 1870?

(Objected to by plaintiff's counsel.)

A. I think it was.

Q. Any others?

A. I think not.

Q. How early did you know what ingredients were used in making this liquor by the plaintiff?

A. I am not certain that I knew it before the fore part of 1867; may have known the latter part of 1866; knew some of them.

Q. What of them did you know there?

A. I think I knew of soap, salt, and fat liquor.

Q. What do you think it is of this liquor-mixture or process that makes these bark-tanned skins soft, pliable, and tough?

(Objected to by plaintiff's counsel.)

A. Fat liquor, warm, being combined with alkali and grease, and properly cut, makes food for the leather. I cannot answer more satisfactorily.

Q. You have stated in substance that the gloves and the mittens made from the leather produced by the experiments mentioned previous to 1869 were not of nearly as good quality as those made by the patented process. Do you mean by the terms "patented process" in that an-

swer the use of fat liquor alone, or the use of fat liquor with the other ingredients mentioned by you combined with it?

(Objected to by plaintiff's counsel.)

A. I mean we can make better leather by fat liquor combined with other ingredients than by fat liquor alone.

Q. Then you mean, do you, in the answer referred to in the last question, by the terms "patented process," the use of fat liquor and the other ingredients mentioned mixed with it?

(Objected to by plaintiff's counsel.)

A. No, sir; I don't understand it that way.

Q. What do you mean by the terms "patented process" referred to in the second preceding interrogatory? State specifically.

(Objected to by plaintiff's counsel.)

A. I mean by "patented process" as stated in the patent. I don't think I can state more specifically.

76 Q. You have stated in substance that the gloves and mittens made of leather prepared by the patented process were of better quality than those made from the leather experimented on prior to 1869. Please state specifically how the patented process named by you was applied and used therein.

(Objected to by plaintiff's counsel.)

A. Take the fat liquor as you get it from the mill, put it into a kettle, a barrel and a half kettle, put fire under it, heat it, put in salt, sal-soda, soap. When it gets warm enough dip it into a tub. Cool what you put in the tub with other fat liquor or water so you can bear your hand in it and work in it; then take bark-tanned sheep and lamb skins and saturate them in this liquor—soak them up well, thoroughly. Take them out of that, lay them on a table, and take them out to dry. They are then staked. That is all.

Redirect examination.

On his further direct examination he further testified:

Q. State whether or not you saw at different times from 1866 to the spring of 1869 the ingredients used in the preparation of this leather by plaintiff.

A. Yes, sir; I did.

Q. State whether the quantities and combinations of the ingredients used by him during that time were uniform or otherwise.

(Objected to by defendants' counsel.)

A. They were not uniform.

Q. State whether, in the experiments made by you under the direction of plaintiff during that time, the quantities and combinations of the ingredients of the liquor were uniform or otherwise.

(Objected to by defendant's counsel.)

A. They were not uniform.

Q. Do you know, as a matter of science, what it is of this mixture or liquor that makes the skins soft, pliable, and tough?

A. I do not.

Recross-examination.

On his further cross-examination he testified:

Q. If the combination of ingredients and quantities of which the liquor used by plaintiff at different times from 1866 up to the spring of 1869 was not uniform, state specifically wherein it differed in ingredients or quantities.

(Objected to by plaintiff's counsel.)

A. We varied it all the time from 1866 to the winter and spring of

1869, sometimes using fat liquor with soap, and nothing else; sometimes putting salt, without soap, into fat liquor; sometimes a little soap in fat liquor, and nothing else; sometimes soap and salt with fat liquor, and sometimes more or less of each. Sometimes, in 1869, we used sal-soda with fat liquor and with salt, and sal-soda with fat liquor in different proportions.

77 On his redirect he further testified:

Q. In your cross-examination you have stated, in substance, that during the entire year 1867 you used fat liquor, sal-soda, and salt mixed together in making bark-tanned sheep and lamb skins into leather. State whether you used such mixture constantly or otherwise during that year, and whether in such use the combinations and proportion of such ingredients were uniform or varied, and if varied, how varied.

(Objected to by defendants' counsel.)

A. It was not used constantly; the combinations and proportions were varied by putting in soap and salt with fat liquor, and by putting in soap, salt, and sal-soda in fat liquor, in different proportions at different times.

(On reading over the testimony given by the witness Fulton, he desires to make the following correction: "I have used simple fat liquor, heated, since the spring of 1869 in treating bark-tanned skins on only a few of them, by way of experiment.")

Recross-examination.

On his farther recross-examination he further testified:

Q. On about how many different occasions since the spring of 1869 have you treated bark-tanned skins with fat liquor alone, by way of experiment?

A. I remember but only one occasion; then treated only a few; cannot tell how many; cannot say, but was not ten dozen; probably fifteen or twenty skins.

Q. Was it in the business of plaintiff and yourself that you treated these few skins in this answer?

A. It was while we were in business together. The plaintiff was not present. This was done since the patent.

Q. Is the fat liquor used by you in the treatment of bark-tanned skins when obtained by you from the mills of uniform strength?

A. I don't know.

Q. How do you ascertain, in the first place, whether it is sufficient strength to apply to the skins?

A. We don't ascertain.

Q. Do you add anything to the fat liquor, and if so, what, for the purpose of giving it greater strength?

(Plaintiff's counsel objects.)

A. Not that I know of.

Q. Do you sometimes add anything for the purpose of reducing it; if so, what?

(To which plaintiff's counsel objected.)

A. No, sir.

Q. What interest, if any, have you in this patent?

A. Not any.

Q. In the business of your firm are skins used and manufactured into gloves that are prepared by this process?

A. They are.

Q. Do you pay to plaintiff, or are you charged by him, in your busi-

ness or otherwise, any sum as royalty or otherwise for the use of this process or patent?

A. I don't know whether he intends to charge me or not. I do
78 not remember that anything has ever been said on that subject between him and me.

Q. Have you ever paid anything to plaintiff or has any charge been made by him against you on that account?

(Objected to by plaintiff's counsel.)

A. I do not know as any charge has ever been made. I never paid anything.

Q. Are the plaintiff and you equal partners in the business of dressing skins, including bark-tanned sheep-skins, and in manufacturing gloves and mittens?

(Objected to by plaintiff's counsel.)

A. We are in the manufacture of gloves, but whether we are in the dressing of bark-tanned sheep-skins I don't know.

Q. Is the business of dressing skins done in your firm-name? I mean bark-tanned sheep-skins.

(Objected to by plaintiff's counsel.)

A. Yes.

Q. How long has that business been done in your firm-name?

(Objected to by plaintiff's counsel.)

A. Ever since the spring of 1866, or since we went into business in the year 1866.

Q. State, if you know, who has kept the books of account in your partnership business.

(Objected to by plaintiff's counsel.)

A. I have.

JOHN FULTON.

Subscribed and sworn to this 15th day of August, 1872, before me.

J. WENDELL,
Special Examiner.

MARVIN J. WHITING, a witness produced, sworn, and examined on the part and behalf of the plaintiff, says:

I reside in Kingsboro', Fulton County; my age is twenty-four years; my business is working in kid business; have been so engaged for something over five years. I mean by kid business preparing skins for the manufacturing of mittens and gloves. I know the parties to this suit. The defendants are engaged in the kid business at Gloversville. They are engaged in the kid work in various forms. It consists of beam-work, dressing, egging, coloring, and preparing skins generally for the manufacture of mittens and gloves. This includes various kinds of skins in that line. I believe the defendants are in business together. The firm-name is "S. Dodge & Son." I know that they have been in business together for five years past. I was in their employment in their business from January, 1867, to the last day of December, 1870. I know they commenced using fat liquor in the fall of 1870. I believe they
79 continued the use of fat liquor up to the time I left. They had not, to my knowledge, used any fat liquor about their business prior to the fall of 1870.

(A question here arising between the counsel for the respective parties in reference to the mode of taking evidence, whether in the form of a narrative or by written questions and answers, I rule and decide that the evidence be taken in narrative form, except the counsel on

either side request the question to be put in writing, in which case the evidence shall be taken by written questions and answers.)

Q. What opportunities, if any, had you for knowing whether they used fat liquor prior to the fall of 1870? State fully.

A. By having free access to all parts of the building or buildings.

Q. State what buildings you mean.

A. The kid-shop, also splitting-shop.

Q. Please state whether there were any buildings or departments connected with their business to which you did not have access.

A. No, sir; there were none.

Q. In what manner and for what purpose did they use fat liquor after the fall of 1870, while you remained with them? State fully and particularly.

(To which defendants' counsel objected.)

A. They used it on bark-tanned sheep and lamb skins by the process of dipping the skins into warm or hot liquor. They heated water in the splitting-shop, with boiler or steam; was then taken from this place by the pail and thrown into a tub in the east end of the wood-shed or coal-house; fat liquor was thrown into this tub, and also cold water to make it the right heat; the bark-tanned skins were then dipped into the liquor in this tub, were left in the tub some 3, 4, or 5 minutes; were then removed from the tub, and went through a process of shaving with a sharp instrument in a circular form, which takes the rough from the flesh side of the skin.

Q. State whether any of the skins dipt in fat liquor (during the time you were there) as you described, had been previously shaved.

A. I think they were.

Q. In such case were the skins subjected to another shave?

A. I think not.

Q. State whether or not the apparent effect upon the skins by their emersion in fat liquor was substantially the same, or different in the two cases; that is, when they had and had not been previously shaved.

(To which defendants' counsel objected.)

A. I don't think there was any difference.

Q. What was the condition of the skins so treated in a bark-tanned state, before being subjected to that fat liquor as you have stated?

A. They were very rough before shaving, and were rather noisy and squeaky, and were not very pliable, and were not in a condition suitable for gloves.

80 Q. How were those which had been shaved previous to dipping in respect to harshness, pliability, squeak, and suitableness for gloves?

A. So far as I have seen, they were not pliable or fit for gloves; they had the harshness and squeak.

Q. How were these skins after the dipping process in reference to harshness, squeak, pliability, and suitableness for gloves?

A. They were soft and pliable, squeak gone from them, and suitable for gloves.

Q. In what proportion was hot water mixed with the fat liquor before the skins were dipped in it; and for what purpose, if you know, was the hot water used?

A. I do not remember as to the quantity precisely; as to the purpose, it was for heating the fat liquor, of course.

Q. Was the proportion of water used greater or less than that of fat liquor?

A. The proportion of water was more than the fat liquor.

Q. At about what temperature of the liquor did you emerse the skins?

A. I don't know; apparently hand-bearable.

Q. State whether or not in case of all the bark-tanned sheep and lamb skins treated by defendants while you were with them, by fat liquor, as you described, the fat liquor was heated.

A. It was, so far as I know.

Q. Were the skins always emersed in the fat liquor while it was in a heated state?

A. They were, so far as I know.

Q. About how many lots of skins were treated by defendants as you described while you remained with them?

A. I don't know.

Q. State, according to your best knowledge and recollection.

A. They had about two lots every fortnight, or thereabouts.

Q. And for how long a time did this continue?

A. I should think they had been working at it some two or three months; I would not be positive which.

Q. How many skins each would the lots average?

(Objected to by defendants' counsel.)

A. They came in bails of one hundred each.

Q. Give your best knowledge and recollection as to the number of skins in each of these lots?

A. I should think from thirty-five to sixty dozens.

Q. Had defendants during the time you were with them any other use for fat liquor, in or about their business, than what you have described, to your knowledge?

(Objected to by defendants' counsel.)

A. Not that I know of.

Q. About how many dozen skins would a barrel of fat liquor treat, as it was used for the purpose by defendants while you were with them, and as you have described?

(Objected to by defendants' counsel.)

A. I should think from thirty-five to forty dozen.

Q. What, if anything, did you do in the treatment of these skins by defendants, as you have described, while you were with
81 them?

A. I prepared the liquor and dipped them.

Q. Under whose direction?

A. Under Samuel Dodge, jun.

Q. Did either of the defendants ever say anything to you on the subject of keeping their treatment of their skins, as you have described, secret; and if so, which and what?

(Objected to by defendants' counsel.)

A. In no other way, except I was cautioned not to allow any persons into the enclosure except such as worked on the premises.

Q. What enclosure do you refer to?

(Objected to by defendants' counsel.)

A. The east end of the wood-shed or coal-house.

(At this point defendant, by his counsel, objected to the answer of the witness to the second preceding question, wherein the witness stated "I was cautioned not to allow any person in the enclosure except such as worked on the premises.")

Q. What part of the business was done in that enclosure?

A. It was used for dipping skins, as I have described—I mean the bark-tanned skins.

Q. Was there anything said to you, or to others, to your knowledge,

by either of defendants about keeping persons from any other portion of their premises?

(Objected to by defendants' counsel.)

A. Not to me nor to others, to my knowledge.

Q. Did either of defendants ever say anything to you about keeping the complainant, Mr. Russell, or his family, or employees from the premises where these skins were dipt by defendants; if so, which and what?

(Objected to by defendants' counsel.)

A. Samuel Dodge, junior, told me not to allow Mr. Russell's boy near the enclosure.

Q. State, if you know, the name and age of the boy referred to.

(Objected to by defendants' counsel.)

A. The name is Charles Russell; think he is about 18 years of age now.

Q. When were these cautions and statements about keeping people away from that enclosure made, and were they made on more than one occasion?

(Objected to by defendants' counsel.)

A. Was in 1870 while I was there, and while they were operating on those skins as I have described. I think they were made on more than one occasion.

Q. During the time defendants were treating skins in fat liquor, as you have described, did you hear either of them say anything about Mr. Russell's patent for treating or preparing leather; and if so, which and what?

(Objected to by defendants' counsel.)

82 A. One day, in the enclosure, I heard Samuel Dodge, jun., say that Mr. Russell could go to hell with his patent; he has got to find out how we do it.

Q. What enclosure do you refer to?

(Objected to by defendants' counsel.)

A. To the east end of the wood-shed or coal-shed, and that is where the skins were dipt into the fat liquor.

Q. What were you and defendant Samuel Dodge, jr., doing at the time of this conversation referred to?

(Objected to by defendants' counsel.)

A. I think we were dipping skins in fat liquor.

Q. State, if you remember, how the conversation commenced about Mr. Russell's patent.

A. I don't recollect.

Cross-examination.

On his cross-examination by defendants' counsel, said witness further testified as follows:

Q. During the time you were in the employ of the defendants, what kind of work did you generally do?

A. The principal part of my work was "staking." By staking, I mean an instrument about two and a half feet high, having an iron or steel blade in it in the top; and the use of this is, the skin is thrown over this steel blade, and stretched in various ways, for the purpose of making it soft and pliable.

Q. In the defendants' business of kid-dressing, while you were with them, who prepared the materials or compounds used upon the skins in their business? State, if you know.

A. I do not know who done all. I have seen Mr. Dodge, senior, do

work of that kind; never saw any one else do work of that kind to my recollection.

Q. Was it any part of your business to prepare materials or compounds of any kind, to be used upon or applied to skins, while you were in their employ?

A. Not to my recollection, in the kid line; but I did make the preparation or liquors for bark-tanned.

Q. Did you make that preparation or liquor by the direction or under the instruction of any other person; and, if so, who?

A. Yes, sir; under the instruction of Samuel Dodge, junior. I do not recollect whether I received such instructions but once or at various times.

Q. Please state what he said to you when giving instructions to prepare liquor for bark-tanned skins.

A. I cannot recall the exact language; but, at any rate, the substance was to put the hot water into the tub and adding fat liquor; also to dip bark-tanned skins into it. I do not recollect that he told me how much water or how much fat liquor to put into the tub; but I presume he did tell, or I should not have known how to go to work.

Q. State specifically what you did in preparing this liquor for bark-tanned skins.

A. In the first place, I procured hot water from the splitting-shop—can't say how much at a time; then added fat liquor, also cold water, to make it of the right heat; after that, commenced dipping the
83 bark-tanned; after I got through dipping, they were taken to the finishing-room and shaved.

Q. Can you state about the quantity of hot water, cold water, and fat liquor used by you, or either quantity, in preparing this fat liquor?

A. I don't recollect.

Q. Did the defendants, during the entire time you were in their employ, keep in use in their manufactory, in the room called the "splitting-room," two tubs in which water or other substance was heated by being connected with their steam-works for use in their business?

A. I think there were.

Q. Were these tubs used constantly for the heating of water or other substance?

A. The one was; the other I can t say anything about it.

Q. Were both of these tubs used for heating pure water? State, if you know.

A. The one was; the other I know nothing about it.

Q. You have stated that one of these tubs was used for heating pure water; was anything warmed or heated in the other tub?

A. I don't recollect.

Q. Where did you obtain what you call fat liquor?

A. From barrels in the east end of this wood-shed or coal-house.

Q. State where this wood-shed or coal-house is situated in reference to this splitting-room, and how you went from one to the other.

A. Are situate about fifty feet apart from tub to tub; this east end of wood-shed is enclosed, is boarded up with sliding doors.

Q. What other work, if any, did defendants do in this east end of the wood-shed or coal-house except dipping skins?

A. Was no other work done there.

Q. Did not the defendants dress skins into bark-tanned leather in this wood-shed or coal-house?

A. Not to my recollection.

Q. Did they make any skins in bark-tan?

(Objected to by plaintiff's counsel.)

A. I think they did.

Q. When?

A. In the fall of 1870.

Q. Where did they tan them?

A. They done it in a smaller building adjoining this wood-shed.

Q. How near the place where the skins were dipped?

A. Some twenty or twenty-five feet.

Q. Were not these skins tanned in the wood-shed and afterwards packed away in this small building?

A. I do not know.

Q. Do you know whether these skins which were tanned in bark by defendants in the fall of 1870 were the same skins dipped by you?

A. I think not; I don't know.

Q. During the time you were in the employ of the defendants, did they in their business of dressing kid leather shave skins other than the bark-tanned skins?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Before shaving the skins other than bark-tanned were the skins made wet by dipping or otherwise, for the purpose of preparing them for shaving?

(Objected to by plaintiff's counsel.)

84 A. They were dampened, but not what I term wet.

Q. Were they not dipped in a liquid or liquor and did you not yourself dip them on several occasions to prepare them for shaving?

(Objected to by plaintiff's counsel.)

A. I never dipped any other than bark-tanned in any liquor to my recollection.

Q. You have stated that you mixed fat liquor with water for the purpose of dipping bark-tanned skins while at defendants' in the fall of 1870. Please state how you know or why you think that what you have called fat liquor was fat liquor?

A. Because Samuel Dodge, junior, told me it was fat liquor—no, sir; that is not all I know; but in my own mind I think it was fat liquor from what I used the year after at Luther Allworth's, in Kingsboro'.

Q. Do you know whether what you used at defendants', supposing it to be fat liquor, was obtained from the mills or was manufactured by defendants?

A. I never saw any manufactured on the premises.

Q. Repeated.

A. I think it was obtained from the mills.

Q. Repeated.

A. The fat liquor I used was brought to defendants' mills in barrels, I think by one Lake or Leake.

Q. Repeated.

A. Yes, I am able to swear it was the same that was brought there in barrels. I do not know of my own knowledge where it come from, or whether it was or not made by defendants.

Q. During the time you were in the employ of the defendants, were they desirous that persons not in their employ, and not having business with them, should not be allowed in and about their place of business?

A. I never heard anything said about that subject, except what I said about Russell in the fall.

Q. You stated on your direct examination, in substance, that one of

the defendants instructed you not to allow plaintiff's son near the enclosure. Please state all that was said on that subject.

A. He made preparations for leaving the place himself, and gave me strict orders to not allow him near the enclosure, or strangers, unless employed by the firm.

Q. Did he state to you in words or in substance that he was going away, and that you must not allow Charlie Russell, or any stranger, nor any one except persons in their employ, about the enclosure?

A. That is to the best of my recollection.

Q. Had Charles Russell or any stranger about that time been loitering about the enclosure?

A. No; I cannot say that I ever saw any one of that description—that is, trying to get inside of the enclosure.

Q. What do you mean by enclosure?

A. I mean the east end of the wood-shed or coal-house.

Q. The defendants' enclosure—where they do business, where
83 their shops are, including this wood-shed or coal-house—includes some two or three acres of land, on which are a number of buildings.

A. I should think there were two or three acres of land, and are a number of shops or buildings on it, used in their business.

Q. You stated on your direct examination, in substance, that the defendants, or one of them, had cautioned you not to allow others than their workmen in their enclosure. Please explain what you mean by "cautioning" you, and state what was said, and who said it.

(Objected to by plaintiff's counsel.)

A. The door is a large sliding door on wheels. He, Samuel Dodge, jr., left a space in the door the width of a hand, and told me not to allow strangers inside the enclosure.

Redirect examination:

On his redirect examination he further testified as follows, to wit:

Q. State whether the bark-tanned skins were subjected in any manner to fat liquor after being shaved, and, if so, how?

A. I think they were. When they went into this enclosure they were dry, and when they came out they were wet; resembled fat-liquor skins. They were then thrown into what is called a "drum." After having a few revolutions in the drum, they were let out into a small tub or box with hot substance in it, ran on wheels; were next thrown into a wheelbarrow, taken to the lines, and hung up to dry.

Q. Speaking about going into the enclosure "dry" in your last answer, do you refer to them after the shaving process?

A. Yes, sir.

Q. Did you ever observe whether they were warm or cold when they came out wet, as you have stated; and, if so, how were they in that respect?

A. They were warm and very slippery.

Q. About how long were they in the enclosure when they went in dry and came out warm and slippery?

A. I should say ten, fifteen, or twenty minutes, or somewhere along there.

Q. Were they cold or warm when they went in?

A. They were cold, of course.

Q. What enclosure do you refer to?

A. I refer to the east end of this wood-shed, where the other dipping was done that I spoke of.

Q. State, if you know, whether there was fat liquor in this enclosure during the time these skins were in there.

A. There was.

Q. State, if you know, whether it was warm or cold, and any knowledge you have on that subject.

A. I have no positive knowledge of it.

Q. Who, if you know, put the skins into the enclosure?

A. Different ones.

Q. Who took them out?

A. I took some of them out myself, and others also took out.

Q. Who, if you know, were in the enclosure while the skins were there?

A. Mr. Dodge, senior.

Q. What, if you know, was in the box or tub in which the skins were placed after coming out of the drum?

86 A. It was a warm liquid; think it was water.

Q. When the skins went into the enclosure dry, as you have stated, were they in the condition in which they came from the shaving-perch?

A. I think they were.

Q. For what purpose, if you know, was the hot water in the tub in splitting-room used except to put into the fat liquor, as you have stated?

A. It was used for other purposes, but cannot tell what for.

Q. What building was situated between the splitting-room and the enclosure where these skins were dipped?

A. The coloring-shop.

Q. What do you mean by defendants' making skins into bark-tanned, as mentioned on your cross-examination?

A. I mean it is taking them in the raw and putting them into the bark-tanned state.

Q. What other skins were shaved by defendants beside the bark-tanned?

A. Kid skins of various kinds is all I recollect beside bark-tanned.

Q. By kids, do you mean skins dressed with salt, alum, and eggs?

A. I do.

Q. State, if you know, whether the fat liquor used by defendants, of which you have spoken, was brought from some place off their business premises.

A. I think it was.

Q. Were you at work in the enclosure where skins were dipped when Samuel Dodge, junior, gave the orders spoken of in your cross-examination about excluding therefrom young Russell and others?

A. I was.

Q. State how many buildings there were on defendants' business premises, and whether situate near together or otherwise.

A. There were five or six; all pretty close together, except one called his old shop; that is distant one hundred feet, maybe more; I never measured the distance.

Q. State whether, during the time they used fat liquor, as you have stated, you had free access to all these buildings and were in them all.

A. I had free access and was in them all.

Q. For what purposes, if any, was the land owned by them and connected with their manufacturing business used?

A. It was used for drying skins. They were hung out in the open field.

Q. When you have spoken in your examination of the exclusion of persons from the enclosure, what enclosure did you mean?

(Objected to by defendants' counsel.)

A. The east end of the wood-shed or coal-house.

Q. Did either of defendants ever say anything to you about excluding persons from any part of their premises other than the enclosure where the skins were dipped?

(Objected to by defendants' counsel.)

A. Not to my recollection.

Redirect:

On his recross-examination he further testified as follows:

87 The building where these skins were dipped is about seventy-five long and about twenty feet wide; floor in part of it; boarded up tight on the end. I think the wood-shed part is boarded up part way from the top, and between the wood-shed and the enclosure is the coal-house.

Q. When you worked at the defendants' was there any way to lock up what you call the enclosure on the inside, where the skins were dipped?

A. There was not.

Q. At the time that you were with the defendants was their entire premises, including this two or three acres of land on which were the several buildings spoken of by you, including the building where these skins were dipped, enclosed by a permanent fence or building on the outside?

A. Yes, they were.

Q. Were the building' where these skins were dipped on the same piece of land that defendants' other buildings spoken of by you were on and open to the other buildings, or was this building separated from the other buildings by a fence or enclosure?

A. I think there was but one fence; that was outside of all the buildings.

Q. Are you able to state here, under oath, of your own knowledge, what was applied to these bark-tanned skins on the occasion of their being taken into this wood-shed, called by you an enclosure, after the skins had been shaved?

A. I am positive there was fat liquor on those skins when they came out. I don't think I can answer more explicitly.

Q. If anything was applied to these skins on this occasion, do you know, and can you swear, what it was?

(Objected to by plaintiff's counsel.)

A. I am positive that fat liquor was used on that occasion on these skins inside of the enclosure.

Q. How do you know fat liquor was used on that occasion on these skins?

A. By seeing barrels of fat liquor going into this enclosure and the barrels going out empty; nothing further.

Q. When did you see the barrels taken in?

A. During the day.

Q. At this time did you know fat liquor so as to tell it when you saw it?

A. I did.

Q. Had you ever used it before?

A. Not before the fall of 1870.

Q. You stated that you thought it was fat liquor that these skins were

dipped in from having used fat liquor the following year at Allworth's. Now, did you know at the time these skins were dipped, as mentioned by you, that fat liquor was used, or did you conclude that it was fat liquor, or did you conclude that it must have been fat liquor while you *was* at work at Allsworth's?

(Objected to by plaintiff's counsel.)

A. I knew it was fat liquor that was used, or at least I took
88 Samuel Dodge, jr.' word for it that it was fat liquor at the time it was used.

Q. While you were at work at Dodge's were you acquainted with fat liquor so that you knew what it was when you saw it?

A. Yes, sir.

Q. How did you know?

A. I knew it from what Dodge told me.

Q. In any other way?

A. In no other way than that it came out of the barrels at that time.

2d redirect examination:

On his further redirect examination he further testified:

Q. You have stated that you saw these skins in their warm and slippery state after they came out of the enclosure, having the appearance of fat-liquored skins. State whether that observation was or was not one means of your knowledge or belief that they had been treated with fat liquor.

(Objected to by defendants' counsel.)

A. It was.

Q. After using the articles once which Samuel Dodge, jr., informed you was fat liquor, had you any difficulty in identifying it afterwards?

A. I did not.

M. J. WHITING.

Subscribed and sworn to this 17th day of August, 1872, before me.

J. WENDELL,
Special Examiner.

FREDERICK S. GREEN, a witness produced, sworn, and examined on the part and in behalf of the plaintiff, testified as follows, to wit:

I reside at Gloversville, county of Fulton. I am thirty-two years of age. My business is a laborer, dressing skins. I know the parties to this action or suit. I was in the employ of defendants; commenced in the fall of 1868, and continued in their employ till January, 1871. Defendants' business was principally dressing kid-leather for mittens and gloves. They do this principally for the manufacturing of mittens and gloves. During the time I was in their employ they did prepare bark-tanned sheep and lamb skins for mittens and gloves. They did this in the summer, fall, and winter of 1870. They commenced in June of that year. They continued it up to the time I left, in January, 1871. They prepared those bark-tanned skins for mittens and gloves by taking them in the bark-tanned state and then put them in warm water, and fat liquors, and then put them into a drum, remained in there about five minutes, and then run them off into a box of warm water. When they come out of the drum they come out in wads or balls like, and are then put into this warm water to straighten them out.

89 There was no preparation or liquid in this drum; merely revolved or rolled around in it; after taking them out of the box of warm water they were hung up on lines to dry. When dry are taken down and

staked; they were then ready for gloves. This staking process is common to all glove-leather. I had previous to working for defendants worked in skin-mills, and knew fat liquor. I assisted in preparing these bark-tanned skins. This process of applying fat liquor was done in the wood-shed or coal-house. I assisted at one time in taking in two barrels into this room, of fat liquor. It was emptied into a large tub all at once. I also carried in a number of pails of hot water, handed it to Mr. Dodge, senior, and he emptied it into the tub containing the fat liquor. I was not in when this fat liquor was applied, but in two or two and a half hours I took skins from that room and took them over into the shop where this drum was. This was the next process. When I took them from the room to the drum-room they were saturated with fat liquor and were warm. When they went into this room they were generally in the bark-tanned state and dry. I never saw any fat liquor used about defendants' premises prior to their using it on bark-tanned skins as mentioned by me. I generally had free access to any part of their business premises. I mean after defendants commenced the use of fat liquor to bark-tanned skins, they averaged about one lot each week, some weeks none, and other weeks more than one. There were from thirty dozen up to seventy dozen in each lot; would average, in my opinion, about fifty dozen to a lot. This leather in its bark-tanned state, prior to being subjected to this process of fat liquor by defendants, was hard and squeaky, and was not suitable for gloves, but after being subjected to this process it was soft, pliable, and no squeak, and was suitable for gloves. I think one barrel of fat liquor would treat about twenty dozen of skins; this is the best estimate I can make.

Cross-examination:

On his cross-examination the witness further testified as follows, to wit: The fat liquor used by defendants, on bark-tanned sheep and lamb skins, was put into the large tub in the room where used by defendants, in the state in which it came from the mills and cold, not having been previously heated; as far as I know it was put into the tub in quantities of about two barrels, and from twenty to twenty-five pails of hot water put in with it. That, I should think, made the fat liquor about milk-warm, judging from appearance, as I did not feel of it. I never knew fat liquor used by defendants being heated in any other form, except by applying hot water as I have stated. The skins, I suppose, were then immersed in the fat liquor thus prepared; I did not see it done; I never knew defendants to apply fat liquor to bark-tanned skins in any other way. The room and building where this fat liquor was applied was within the defendants' enclosure where they carried on their business; was a room furnished off in a rough state. Some of these skins were tanned in bark by the defendants. Defendants always kept heated water on hand constantly in their business; used it for other purposes besides using it with fat liquor. In the year 1862 I worked for Curtis Mills, in his skin-mill at Gloversville, some three or four months. He manufactured skins for mittens and gloves in his mill; manufactured buck-skin, sheep-skin; also manufactured mittens and gloves; I think principally sheep-skins at that time. We dressed the sheep-skins and deer-skins in oil, and in doing so we made fat liquor.

A. It was used for the purpose of scouring or taking superfluous oil out of skin.

Q. Did the use of fat-liquor by Mills on sheep and deer skins make them soft and pliable when too hard for use?

A. State, if you know.

(Objected to by plaintiff's counsel.)

A. It was a further process of dressing the leather; I do not know as it was used to make them soft. The effect I observed was, it cleaned or cleansed the skins.

Q. If the skins were hard and stubborn, how did you make then soft and pliable?

A. By an application of oil. I do not remember that we used fat liquor for the purpose of softening them.

Q. Did you use fat liquor on all skins dressed by you for mittens and gloves in 1862?

A. Yes, sir, we did.

Q. What kind of skins were the sheep-skins dressed by you at Mills' mills, in 1862?

A. Some were fleshers; they were all skins without having the grain on.

Redirect examination:

On his further direct examination the witness further testified as follows, to wit: "While these bark-tanned skins were being dipped at defendants', I do not know of any other person being in the room except Mr. Dodge, senior; I think no other person was in. Both buck and sheep skins dressed in Mills' mill while I was there were so dressed in oil; generally called oil-dressed leather; did not use the bark-tanned skins. Skins dressed in Mr. Mills' mill while I was with them were taken in a raw state, and were dressed into oil-dressed leather.

Q. When you say, on the cross-examination, that fat liquor was used on all the skins dressed by Mills while you were with him, do you
91 refer to the process in oil-dressing called scouring?

A. I do.

Q. In speaking of the application of oil to hard and stubborn skins to make them pliable, do you refer to the process of oil-dressing?

(Objected to by defendants' counsel.)

A. I do; milling, I believe it is called.

On his recross-examination he further testified as follows:

Q. State specifically the manner of applying fat liquor to deer-skins and sheep-skins in preparing such skins for mittens and gloves while you were in the employ of Mr. Mills at his skin-mills in 1862.

A. The skins were soaked in a large tub or vat of soda-ash liquor; that is the only way fat liquor was applied.

Q. Were they so soaked in fat liquor they had been milled in oil?

A. Yes, sir.

Q. Did you warm the fat liquor or apply it cold?

A. It was used cold; did not warm it on any occasion.

Redirect examination:

On his further redirect examination witness further testified as follows:

The first thing we done to these skins in dressing it in oil, was milling them, which is putting them in stocks and running them with oil; the next process is to put them into a liquid made of soda-ash and water, which makes the fat liquor; that is, the liquid left after taking the skins out. Putting the skins into this liquor is part of the process of scouring the skins; after this they are put into the stocks, and water run into them and the process of scouring finished. When speaking of their being soaked in a large tub or vat of fat liquor, I referred to their being

immersed in this soda-ash and *and* water. Before the immersion of these skins there is no oil or fatty matter in the liquor. It is the union of the oil from the skins with the liquor that makes the fat liquor. In the process of oil-dressing, no fat liquor was used except in the process of scouring as I have described.

On his further cross-examination he further testified as follows:

Q. In dressing skins in oil after they are milled in oil, do you put them into a liquor prepared of soda-ash and water?

(Objected to by plaintiff's counsel.)

A. We do.

Q. Do the skins when put into this liquor contain the oil used on them in milling them?

A. They do.

Q. What effect is produced by the liquor in which you put them?

A. It removes or takes out the superfluous oil.

Q. Does that superfluous oil remain in the tub, mixed with the liquor, when you remove the skins?

A. Some of it does.

92 Q. Is the liquor left in the tub when the skins are removed from it called fat liquor?

A. It is called soda-liquor.

Q. Did you continue to use this same liquor containing oil from the first batch of skins put in it, upon other lots of skins, coming from the mill after having been milled in oil?

A. Whatever remained in the tub was so used, by replenishing it by soda-ash and water. After taking them from the tub, we put them in the stocks, and scoured them by running in the stocks, during which a small stream of water was running on them, and the substance obtained from the process of scouring, in water-oil and soda-ash; that substance is sometimes saved, and is fat liquor too; this is weaker than that made in the tub. It is not used in oil-mills for oil-dressed leather.

On his further redirect examination the witness further testified as follows, to wit:

Q. You mean, do you, that more than one batch of skins coming from the stocks in oil is immersed in soda-ash and water by replenishing the liquor with more soda-ash and water?

A. I do; this was not always the case; sometimes one way and sometimes another. The immersion of these skins in this liquor in the tub was always for one purpose, that of scouring.

Q. In speaking of the fat-liquor which comes from the stocks being weaker than that made in the tub, do you mean it has a larger proportion of water to the other ingredients?

A. That is my meaning.

On his further re-cross examination he further testified as follows:

I mean by the term "stronger" that it has more soda-ash in the liquor in the tub than that from the stocks.

FREDERICK T. GREEN.

Subscribed and sworn to this 19th day of August, 1872, before me.

J. WENDELL,
Special Examiner.

MORGAN PUTMAN, a witness produced, sworn, and examined on the part and in behalf of plaintiff, testified as follows, to wit:

I reside in Kingsboro', Fulton County. I am twenty-two years of age. My business is kid-dressing. I know the parties to this suit. I am in the employ of the defendants, and have been for about seven years last

past. During the last few years, defendants have used fat liquor about their business. I should think it was about the year 1870 when
93 I first saw them use it. They use it for the purpose of dressing the bark-tanned sheep and lamb skins. This dressing is done in the splitting-shops for all this time it was done there. It is situate in a northeasterly direction from the kid-shop. It is connected with the coloring-shop. The wood-shed and coal-house are separate from this. There has no dressing of this kind been done in the wood-shed or coal-house to my knowledge, but I am not certain about it. The skins were dipped into the fat liquor; that is, the ones dressed in the splitting-shop. The liquor was warmed by means of warm water, hot water. The skins were in the bark-tanned state when they were put into this fat liquor. Cannot state how long they were left in, as I would not remain in the shop long enough to ascertain. I was not in the shop all the time they remained in the liquor. When taken out they went to the drum, and from there hung out on the lines to dry. After drying they went through the staking process, when they were fit for use. From the time defendants commenced this process, they have continued it all the time. Think they have done about two batches a week on the average. They might average from ninety to one hundred dozen each batch. They have not during the period I spoke of used fat liquor for any other purpose, to my knowledge, on the premises.

On his cross-examination he further testified: In preparing this fat liquor for application to these skins, I think cold fat liquor is put into a tub, and warmed by putting hot water into it; I think hot boiling water, but cannot say. I cannot state the proportionate quantity of fat liquor and water; I did not work at this part of the business. In preparing the skins for dipping, and after I counted them off into dozens in that shop, then I would leave for another shop. My business was staking generally. I cannot state positively whether defendants did or did not use fat liquor prior to 1870, but they did not to my knowledge.

On his further direct examination he further testified as follows:

I did not at all times have free access to all parts of their premises; I did not at all times have access to the splitting-shop. Did not have free access while the bark-tanned were in there; I mean while they were undergoing that process in fat liquor, as I understood it. Samuel Dodge, senior, and John O'Neil were generally in there while this process went on, and sometimes some one else would take Mr. Dodge's place; sometimes E. C. Morgan took Dodge's place, at other times Samuel Dodge, junior. I assisted in removing skins from that room to the drum.
94 They were at such times warm and greasy. At all other times I had free access to all the buildings, except as I have stated.

Cross-examination:

On his further cross-examination he further testified: I mean I could not get inside the doors. After my work was done in counting up the skins, I would sometimes go to staking and sometimes at something else, in what they call the finishing-room. This is in another building apart from the splitting-room. I had nothing further to do after counting up the skins, in that room, so went about my work in another building. It was no part of my business to apply the fat liquor to the skins, or the skins to the fat liquor.

On his further direct examination he further testified as follows, to wit:

When I came to count the skins, I was called from my other business

by defendants, whatever I was engaged in. When I got through counting the skins, I was sometimes directed by defendants to other work, and sometimes I was not, and when not, I returned to the work I was engaged on prior to being called away. What I mean by not being able to get inside the doors while this process was going on is that the doors were fastened.

On his further cross-examination he further testified as follows:

Defendants' steam-engine and machinery used in their business were in this room called the splitting-room.

MORGAN PUTMAN.

Subscribed and sworn to this 19th day of August, 1872, before me.
J. WENDELL,
Special Examiner.

MORGAN PUTMAN, a witness, sworn and examined in this case on the 19th day of August, 1872, desires to make, and does make, the following correction: instead of "they might have averaged from 90 to 100 dozen each batch," insert "about '40' dozen a week."

MORGAN PUTMAN.

Taken, subscribed, and sworn this 28th day of February, before me.
J. WENDELL,
Special Examiner.

95 Admitted that the above-named witness, Morgan Putman, on the next day after his examination, returned and desired his evidence corrected as above, and that it would have been done before plaintiff rested but for the fact that the hearing had been previously adjourned to a future day, and the further fact that the witness was taken sick and unable to come to Johnstown at an earlier day.

JAMES CHRISTIE, a witness produced, sworn, and examined on the part and behalf of plaintiff, testified as follows, to wit:

I reside in Gloversville, Fulton County; am fifty years of age. My business is running a mill for dressing all kinds of oil-dressed leather for the manufacture of mittens and gloves; calculated for that, we have in our mill, and sell, fat liquor. I have during the past two years sold to defendants. I sold them four barrels for the two years before this year, and am selling them this year considerable more than the other years, but have not looked over my books to see how much I sold them this year. I sold them the first some time in 1869; I cannot tell at what time in the year. I did not include in the four barrels what I sold in 1869. The four barrels were sold to them between February, 1870, and February, 1872.

On his cross-examination he further testified as follows:

I first made fat liquor at a skin-mill about thirty-five years ago, and ever since that time when operating a skin-mill. I have run a skin-mill for the last twenty-five years in Gloversville except one year. For the last twenty-five years I have been in the habit of selling fat liquor to persons engaged in the manufacture of leather for mittens and gloves in Gloversville and vicinity.

Q. State how long you have used fat liquor in the manufacture of leather for mittens and gloves in Gloversville, if you have used it at all.

(Objected to by plaintiff's counsel.)

A. For the last twenty-five years.

Q. On what kinds of skins have you used it for the last twenty-five years?

(Objected to by plaintiff's counsel.)

A. On all kinds of skins I ever dressed; that is, deer-skins, sheep-skins, lamb-skins, Patney's hog-skins, calf-skins, and goat-skins, and bless-bocks.

Q. For what purpose have you, for these twenty-five years, applied the fat liquor to these several kinds of skins?

(Objected to by plaintiff's counsel.)

A. Sometimes for one thing and sometimes for another, but generally when we got a little too much alkali into the skin we dip them
96 in fat liquor, or we put them in the stocks and turn fat liquor on to them, then we hang them on a line and dry them; that is all we do with fat liquor on these skins.

Q. Question repeated.

(Objected to by plaintiff's counsel.)

A. For softening them.

Q. What effect did the application of fat liquor have on these skins when too hard for use?

(Objected to plaintiff's counsel.)

A. As a general thing it softens them.

Q. Did it render them suitable for mittens and gloves when they were too hard for mittens and gloves before its application?

(Objected to by plaintiff's counsel.)

A. Not while the fat liquor was in them; we put them back in the stocks again, take that fat liquor all out, hang them out on the lines again, then are ready for staking and finishing, and are ready for the cutting-shop.

Q. Can such skins as are too hard for mittens and gloves be rendered soft and pliable and suitable for mittens and gloves without the use of fat liquor upon them?

(Objected to by plaintiff's counsel.)

A. Yes; by milling them over. The fat liquor is less expensive than milling.

Q. Has it been customary for persons engaged in the manufacture of these several kinds of skins spoken of by you, into leather for mittens and gloves, to use fat liquor upon them for the past twenty-five years for the purpose of rendering them soft and pliable?

(Objected to by plaintiff's counsel.)

A. I guess fat liquor has been universally used at all mills for softening leather; I cannot say of my own knowledge.

Q. Have you used it at your mill for twenty-five years past for the purpose of softening leather?

(Objected to by plaintiff's counsel.)

A. I have used it for twenty-five years for that purpose, except one year when I was out.

Q. Have you seen it used during that period at other mills?

(Objected to by plaintiff's counsel.)

A. I can't say that I ever *see* a man fat-liquor skins except what was done at my mill.

Q. How did you apply the fat liquor as to its being warm or cold?

(Objected to by plaintiff's counsel.)

A. Always applied it cold.

Q. Did you apply it in many instances to bark-tanned skins?

(Objected to by plaintiff's counsel.)

A. I did once on a half-dozen; that was this season; were bark-tanned lamb-skins.

Redirect examination:

On his redirect examination the witness further testified as follows, to wit:

Q. Please state in their order all the processes involved in oil-
97 dressing skins.

A. When the skins come to the mill, they are taken from the beam-house. The grain and hair and flesh were previously taken off clean, then I mill them, that is put them in stocks, and run them. The stocks work on the same principle as the old fulling-mills. Are kept in from half an hour to four hours according to the condition of the skins. After they are sufficiently run, the next process is to hang them up and dry them, then we put them back in the stocks again, and give them another run, and put on what oil we think they will take, using fish-oil of some kind. We keep them in one from one to two hours; then we hang them out again to dry and return them to the stocks to run them again and pour oil on them, then hang them out again and dry them, then return them to the stocks again, and run them in oil the third time oiling most generally get on enough oil by that time, then we hang them out to dry, and then mill them again, without putting on oil, repeating this process three or four times, then they are milled; we then call them leather. The next process they go back to the beam-house, and go through the process of scudding, that is, they are put on to the beam and are scraped with a knife that is almost to an edge to take off all surplus rough matter; then they are dried; then brought back to the mill again, then we put them into a vat, where there is alkali and water. Alkali is made of soda-ash and dissolved in water. Leave them in that vat about twelve hours. This process cuts and dissolves the oil in the skins. We then take them out and put them in the stocks again; here we run clean water on them while they are being worked in the stocks. This process takes probably three-quarters of an hour. We then take them out of the stocks again, and hang them out on the lines. Let them hang till they get dry; then put them back again into the same, or some vat, but weaker liquor, that is weaker of alkali and water. We let it lie in there overnight, then we put in the stocks again, let clean water run on them, then hang them out on the lines again and dry them, then put them back in the vat again, into this same liquor, with alkali reduced weaker liquor, then we put them in the stocks again, run clean water on them until every particle of fat liquor is out of them, then we hang them out on the lines again, and let them hang till they are perfectly dry, then we carry them to the finishing-room; we take a little water, sprinkle it on them, and dampen them, then fold them up and put them into a box, then they are ready to stake.

Q. Please state the purpose of putting them into the alkali and water the several times as you have described.

98 A. The first time we put them in is for the purpose of cutting or dissolving the oil. The second time we put them in, is to cut the oil; if there is any oil that is not cut the first time, we add a little alkali and finish the cutting of the oil. The third time is for the purpose of scouring them clean.

Q. What is the purpose of putting them into the stocks and running them in water the several times, after taking them from the alkali vat?

A. It is for the purpose of running the oil and alkali out of the skin,

and constitutes part of the process, called scouring. The process of putting them in alkali and putting them in stocks as described constitute the process of scouring.

Q. All the processes described by you included, constitute what is known as oil dressing or tanning?

A. Yes, sir.

Q. If in any of these processes described by you, fat liquor is produced, please state which.

A. In running them in the stocks the first and second time after taking them out of the alkali.

Q. You speak of sometimes using fat liquor in the oil-dressing of skins. Please state at what stage of the process that is used.

A. Generally after the skins are scoured, cleaned, and dried.

Q. State whether the fat liquor is so used in all, or only in certain cases, and if so what.

A. In certain cases; sometimes they are scoured too clean, and sometimes they have too much alkali in them. Sometimes they hang out in a heavy rain-storm, or rained on, sometimes they are not milled properly, but that very seldom occurs.

Q. In about what proportion of instances to the whole number of skins oil-dressed is fat liquor thus used?

A. Not a very great proportion. Small compared with the whole numbers.

Q. Please state whether the defect in the skins for which the fat liquor is used might be supplied by milling in oil as you have described.

A. Yes, sir; it might.

Q. When you use fat liquor, do you afterward subject the skins to the scouring process?

A. Yes, they must be scoured just as clean as they were before fat liquored.

Q. State whether the use of fat liquor as you have described is or is not one of the incidents of oil-dressing skins employed in exceptional cases, as a substitute for the more expensive process of remilling them in oil.

(Objected to by defendants' counsel.)

A. It is, but if fat liquor fails, we must remill them afterwards in oil.

Q. Please state whether the skins, in their condition, when you subject them to fat liquor, have in them what is known as squeak.

A. No, sir.

Q. Do you take skins in their green state, that is before being tanned to oil-dress as you have described?

A. Yes, sir.

99 Q. In your answer that you have used fat liquor for the manufacture of leather for mittens and gloves in Gloversville, for the last twenty-five years, do you refer to the use of it as you have now described?

A. Yes, I do, and I refer to the same use of it, when speaking of its use at other mills for the last twenty-five years.

Q. When in answer to a question by counsel for defendants, you speak of having used fat liquor for the last twenty-five years, for the purpose of softening leather, do you refer to its use in the oil-dressing process as you have described?

A. Yes, sir.

Q. Please state whether the sheep and lamb skins oil-dressed by you were what are known as "fleshers," not having the grain on.

A. They were. I have done some what are called "roans," that is with grain on; done but very few, however.

Q. Would the use of fat liquor, as employed by you on the oil-dressed leather, if applied to sheep and lamb skins in the green or untanned state produce leather fit for gloves?

(Objected to by defendants' counsel.)

A. I should think it would not.

Recross-examination:

On his further cross-examination by defendants' counsel, the witness further testified as follows, to wit:

Q. in the oil dressing of skins for mittens and gloves, as stated by you, is the oil used for the purpose of tanning the skins?

Yes, sir.

Q. Is fat liquor applied until after the skins are scoured clean and the oil removed from them?

A. As a general thing, fat liquor is not applied until they are scoured clean and dried, and the oil removed from them.

Q. For what purpose is fat liquor then applied to them, and what effect is produced by its application?

(Objected to by plaintiff's counsel.)

A. Sometimes we find that after they are scoured and dried, there is too much alkali in them, and sometimes we think they are overscoured, are often rained on, which flattens the leather; sometimes when not properly milled we use fat liquor. When there is too much alkali in it leaves the skins hard and tight; in that case we use fat liquor, which makes it more pliable and soft. When overscoured it leaves them hard and tight, and fat liquor renders them soft and pliable. When rained on, the fat liquor makes them rather plumper and heavier. When rained on, the skins are rather flat and the edges thin and wiry, and fat liquor is used to make the skins heavier and plumper, also makes them softer, but it is not used so much for that as it is to make them plumper; also makes them more pliable; makes it better every way.

Q. Does the application of fat liquor, as stated by you in the
100 preparation of skins for mittens and gloves, produce a greater benefit to the skins and render them more suitable for mittens and gloves?

(Objected to by plaintiff's counsel.)

A. They are generally improved by it, after being scoured and made better generally.

Q. When you have applied fat liquor to skins, as stated by you for the past twenty-five years, have you applied the liquor generally in the same manner?

(Objected to by plaintiff's counsel.)

A. Not precisely in the same manner. All the difference is, we run the skins in both cases in the stocks; sometimes we pour fat liquor on them in the stocks—what we call filling them up. In the other case we put them in a tub with fat liquor in it; that is all the difference.

Q. During this period of twenty-five years, have you used and applied the fat liquor substantially in the same state and for the same purpose?

(Objected to by plaintiff's counsel.)

A. Yes, sir; the state of the liquor was substantially the same; we like it as rich as we can get it, and we always use it for the same purpose.

Q. About how many years ago did you first learn that skins, being manufactured into leather for mittens and gloves, were greatly benefitted

and rendered more suitable for such manufacture by the application to them of fat liquor, as you have stated?

(Objected to by plaintiff's counsel.)

A. Twenty-five years ago.

Q. Since you first learned that fat liquor applied to skins, as stated by you, was of benefit to such skins in preparing them for gloves, have you used fat liquor on leather, as stated by you, for the purposes stated by you every year, except the one you were out of the business?

(Objected to by plaintiff's counsel.)

A. I think I have.

Q. In dressing skins in oil for gloves, are they placed in the stocks in batches; and, if so, how many in a batch?

A. A batch consists of any number of skins brought to the mill by any one individual at one time. We put the entire batch into the stocks at once if we have room for them.

Q. Do you sometimes apply fat liquor to an entire batch for the purposes stated by you?

(Objected to by plaintiff's counsel.)

A. We do, when they all need it.

Q. State whether or not, in the dressing of oil-dressed leather for mittens and gloves, it is frequently the case that an entire batch of skins need fat liquor applied to them for the purpose stated by you, to render the skins suitable for mittens and gloves.

(Objected to by plaintiff's counsel.)

101 A. It is not very frequently done in our business; probably half the number of batches that we do fat liquor, we have to fat liquor the whole batch. In some cases, part of a batch will need fat liquor, and part will not.

Q. Please state, if you know, why it is that a part of the same batch requires to be fat liquored and a part not.

A. I cannot give any particular reason, except the difference in skins. Some skins are more firm than others, and will stand more milling. The leather will be more tight than others, and not elastic. We sort the tight ones out of the batch, and apply fat liquor to them or mill them over.

Q. State whether or not fat liquor applied to skins, as stated by you, for the past 25 years, has uniformly produced substantially the same effect upon the skins.

(Objected to by plaintiff's counsel.)

A. It has the same effect upon the skin in the same state. It does not have the same effect on a skin badly milled that it does on a skin that has hung in a rain-storm. In case of skins that have hung in the rain, it makes them soft, livens up the edges, and makes them plump. Skins badly milled, fat liquor does not have so much effect on them.

Redirect examination:

On his direct examination the witness further testified as follows, to wit:

Q. In your answer saying, in substance, that, as a general thing, fat liquor is not applied to skins until they are scoured, clean, and dried, and the oil removed from them, do you mean the surplus oil, or the oil cut by the alkali, as you have stated?

(Objected to by defendants' counsel.)

A. I mean the oil cut by the alkali.

Q. Do you ever apply the fat liquor where the ordinary processes of oil-dressing are perfect?

A. They were. I have done some what are called "roans," that is with grain on; done but very few, however.

Q. Would the use of fat liquor, as employed by you on the oil-dressed leather, if applied to sheep and lamb skins in the green or untanned state produce leather fit for gloves?

(Objected to by defendants' counsel.)

A. I should think it would not.

Recross-examination:

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Q. For what purpose is fat liquor then applied to them, and what effect is produced by its application?

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Q. About how many years ago did you first learn that skins, being manufactured into leather for mittens and gloves, were greatly benefitted

and rendered more suitable for such manufacture by the application to them of fat liquor, as you have stated?

(Objected to by plaintiff's counsel.)

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Q. Since you first learned that fat liquor applied to skins, as stated by you, was of benefit to such skins in preparing them for gloves, have you used fat liquor on leather, as stated by you, for the purposes stated by you every year, except the one you were out of the business?

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Q. In dressing skins in oil for gloves, are they placed in the stocks in batches; and, if so, how many in a batch?

A. A batch consists of any number of skins brought to the mill by any one individual at one time. We put the entire batch into the stocks at once if we have room for them.

Q. Do you sometimes apply fat liquor to an entire batch for the purposes stated by you?

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A. We do, when they all need it.

Q. State whether or not, in the dressing of oil-dressed leather for mittens and gloves, it is frequently the case that an entire batch of skins need fat liquor applied to them for the purpose stated by you, to render the skins suitable for mittens and gloves.

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Redirect examination:

On his direct examination the witness further testified as follows, to wit:

Q. In your answer saying, in substance, that, as a general thing, fat liquor is not applied to skins until they are scoured, clean, and dried, and the oil removed from them, do you mean the surplus oil, or the oil cut by the alkali, as you have stated?

(Objected to by defendants' counsel.)

A. I mean the oil cut by the alkali.

Q. Do you ever apply the fat liquor where the ordinary processes of oil-dressing are perfect?

(Objected to by defendants' counsel.)

A. No, sir.

Q. State whether or not the purpose of using fat liquor as you have described is to remedy the defects which sometimes occur in the ordinary processes of oil-dressing.

(Objected to by the defendants' counsel.)

A. Yes; that is what we use fat liquor for, to remedy the defect, in the process of oil-dressing.

Q. State whether this is what you refer to in your answer, when you say, in substance, that "the skins are improved by the fat liquor after they are scoured, and made better generally."

(Objected to by defendants' counsel.)

A. That is what I mean.

Q. When you say in substance in answer to a question by defendants' counsel, that sometimes a batch of skins need fat liquor applied to them to render the skins suitable for mittens and gloves, do you
102 mean anything more than that the defects in the ordinary oil-dressing processes needed to be remedied, and that fat liquor was used for that purpose?

(Objected to by defendants' counsel.)

A. I mean that the fat liquor was applied to bring the skin back to where it was before it was defective.

Q. Did it, or not, sometimes happen in your experience in the application of fat liquor, as you have stated, that the fat liquor did not remedy the defect, and that you had to mill the skins in oil afterward?

(Objected to by defendants' counsel.)

A. I have had such cases.

Q. State whether the manner of the use of fat liquor by you and the length of time to which you subjected the skins to it, were uniform or otherwise.

A. I could not say it was uniform, for we sometimes poured fat liquor upon them while in the stocks, and sometimes put them into a tub with fat liquor; these two ways are the only way I ever used it; the time is varied according to circumstances; it makes no difference what is the cause of the defect. The time they were kept in was uniform, unless something hindered us from taking them out.

Q. What time were they kept in generally?

A. Those in the stocks from five to eight minutes after applying fat liquor to them. Those in the tub about half an hour.

Q. When fat liquor is applied in stocks, are the stocks at work, and how long do you run them in the stocks?

A. I cannot answer that question as it is put.

Q. When fat liquor is applied in stocks, are the stocks at work?

A. Yes, sir.

Q. Do you at the same time run the skins in the stocks before putting on the fat liquor; and, if so, how long?

A. Yes, sir; about half an hour.

Q. Do you sometimes subject the skins to fat liquor the second time, after drying, before scouring?

A. Yes, sir; we do.

Q. When you use fat liquor in oil-dressing skins, as you have stated, is the leather produced generally of as good quality and as suitable for mittens and gloves as it is when the ordinary processes of oil-dressing are perfect?

(Objected to by defendants' counsel.)

A. Sometimes it is, and sometimes it is not.

Cross-examination:

On his further cross-examination the witness further testified:

Q. You stated in answer to the last preceeding question in substance that sometimes when you use fat liquor upon skins you get as good quality of leather and as suitable for mittens and gloves, and sometimes do not, as when the ordinary processes of oil-draining are perfect. State, when you fail to get a good quality of leather, the cause of
103 such failure.

A. We cannot always tell the cause. It does not depend on the fat liquor—fat liquor will do its work—but depends on some defect of the skin.

Q. Why do you fat-liquor skins sometimes the second time?

A. When fat liquor does improve the skin, but they don't really suit us; we fat liquor them the second time to improve them more.

Q. Before fat-liquor is applied to the skin, is all the oil removed?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Redirect:

On his further redirect examination the witnesses further testified as follows:

Q. Do you mean by your last answer, as you before stated, the superfluous oil, or oil cut by the alkali?

A. I mean I never fat liquor any skins as long as there is any tight oil in it, or oil that is not cut.

Q. Please state whether the use of fat-liquor to supply a defect in the oil-draining process on a given skin produces as good leather as the oil-dressing process, when perfect without the fat liquor on the same skins.

A. Sometimes it does, and sometimes it does not. I am not a chemist, and do not understand it scientifically, but practically.

On his further cross-examination the witness further testifies as follows:

Q. For the past twenty-five years, (excepting the one year you were out of business,) have you kept constantly on hand for use in your business of dressing skins for mittens and gloves, fat liquor?

(Objected to by plaintiff's counsel.)

A. No, sir; we do not keep it on hand; if we don't want to use it when we make it, we make other use of it.

Q. Do you usually have fat liquor for use in the dressing of skins for mittens and gloves at your mill, and have you so had it for twenty-five years last past?

(Objected to by plaintiff's counsel.)

A. For the past twenty-five years, except the one year when I was out, we have made fat liquor nearly every day when our mill was in running order, and if customers wanted it we let them have it, and if at night we have any left we neutralize it and make sad-oil of it for other use. We make fat liquor nearly every day, and use it if we want it.

Q. How frequently do you use fat liquor or skins as you have stated? Please state.

(Objected to by plaintiff's counsel.)

A. I cannot tell; sometimes once a week, and sometimes once a month; depends something on the weather, sometimes in a little mismanagement in milling.

104 On his further re-direct examination the witness further testified, as follows: "Fat liquor is a result of one of the processes of oil dressing skins, and is made whenever we oil dress-skins. We do not keep it on hand for use, but use it from time to time as we make it. That is we use it as before described, when we need it."

JAMES CHRISTIE.

Subscribed and sworn this 21st day of August, 1872, before me.

J. WENDELL,
Special Examiner.

JOHN FULTON, being recalled on the part and in behalf of the plaintiff, further testifies as follows, to wit:

Q. Please state, if you know, the number of persons or firms in Gloversville and vicinity who are manufacturing and selling gloves made from leather substantially of the character produced by the plaintiff's patented process, besides your firm and persons and firms supplied by your firm with the leather.

(Objected to by defendants' counsel.)

A. I know of fourteen persons or firms; can't say how extensively, but some are apparently doing it quite extensively.

Q. State whether or not there was, to your knowledge, any such leather or gloves made or sold in Gloversville or vicinity at and before the date of complainant's patents.

(Objected to by defendants' counsel.)

A. There was not to my knowledge.

Q. State whether or not there has been any depreciation in the market price of gloves made from this leather since the spring of 1870; and, if yea, to what extent.

(Objected to by defendants' counsel.)

A. There has been a depreciation on an average of three dollars per dozen.

Q. State, if you know, whether there has been any cause for this depreciation, except the competition caused by the manufacture and sale of these gloves by others, as just stated by you.

(Objected to by defendants' counsel.)

A. I know of no other cause.

Cross-examination:

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. Do you know, of your own knowledge, how the leather was manufactured, or what ingredients, if any, were applied to it, or used
105 in its manufacture, that the fourteen persons and firms manufacture gloves of, as stated by you?

A. I do not.

Redirect examination:

On his redirect examination by plaintiff's counsel, the witness further testified as follows, to wit:

Q. State how you judged the leather, spoken of by you, to be of substantially the same character as that produced by Russell's patented process.

(Objected to by defendants' counsel.)

A. By its appearance, feeling, and by smelling.

Recross-examination:

On his further cross-examination by defendants' counsel, the witness further testified as follows:

Q. Please explain what you mean by the term "smelling" in your last answer, and how you detect plaintiff's patented process thereby.

(Objected to by plaintiff's counsel.)

A. By the smell of fat liquor in the leather.

JOHN FULTON.

Subscribed and sworn this 21st day of August, 1872, before me.

J. WENDELL,
Special Examiner.

LEWIS P. JOHNSON, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows, to wit:

I reside at Gloversville, Fulton County; I am aged thirty-eight years. I am at present a manufacturer of mittens and gloves. I had been engaged in oil-dressing leather for mittens and gloves for the last fifteen years, until May last. During this time I was running a skin-mill in Gloversville. I know the parties to this suit. Between the first day of February, 1870, and the first day of February, 1872, I did sell fat liquor to defendants. I have them charged with one hundred and forty casks, casks containing about forty gallons each. When they first began buying they paid cash for about ten casks, or somewhere along there, which are not included in the one hundred and forty casks.

L. P. JOHNSON.

Subscribed and sworn this 21st day of August, 1872, before me.

J. WENDELL,
Special Examiner.

Whereupon plaintiff rested.

106 *Defendants' evidence.*

JAMES L. NORTHRUP, a witness produced, sworn, and examined on the part and in behalf of the defendants, testified as follows, to wit:

I reside in Johnstown, Fulton County; I have resided in this county nearly thirty-six years. I am nearly fifty-four years of age. I am engaged in the manufacture and sale of mittens and gloves. I commenced the manufacture of mittens and gloves in the winter of 1854 and 1855. I am acquainted with bark-tanned sheep and lamb skins, and have been so acquainted since the year 1849, when in the bark-tanned state.

Q. Have you prepared bark-tanned sheep and lamb skins for the manufacture of mittens and gloves? and, if so, state when first, how, and in what manner.

A. The first was in the winter of 1854 and 1855. I took them in the bark-tanned state; I wet the skins in water; after having drained sufficiently, I put them into a liquor I had prepared in a tub; this liquor was composed of fat liquor, usually reduced with water. Sometimes I change this, depending on the condition of the leather, and what I wanted to make of the leather. Sometimes I put in eggs, sometimes neat's-foot oil, sometimes soft soap, alum, salt. After my liquor was prepared, the skins were put into it. We usually got in and tread it barefooted until the skins had taken up most of the fatty substance in the liquor. Then the skins were taken and dried. Then staked, which

is to soften them. Then for fine goods they were mooned, or pared. They were then ready to be cut into goods.

Q. How did you prepare the liquor used upon these bark-tanned skins?

A. I took fresh fat liquor, I heat it, but not hot enough to scald, and in that state I applied the skins.

Q. Did you generally use the fat liquor, with the other ingredients, or any of them mentioned by you mixed with it, or did you use fat liquor alone?

(Objected to by plaintiff's counsel.)

A. Sometimes I used fat liquor alone and sometimes I use fat liquor with some one of them, and perhaps more than one.

Q. State whether or not the bark-tanned sheep and lamb skins so treated by you were hard and squeaky and unsuitable for gloves in the bark-tanned state.

(Objected to by plaintiff's counsel.)

A. They were not good skins.

Q. In your answer to the last question, did you understand the
107 question as calling for the condition of the skins before or after you had treated them with fat liquor?

(Objected to by plaintiff's counsel.)

A. I understood it as meaning after I had applied the fat liquor.

Q. What was the condition of the bark-tanned sheep and lamb skins, so treated by you, while in the bark-tanned state, before you had applied fat liquor to them, as to their being hard and squeaky or otherwise?

A. When dry the skins were hard and squeaky and stiff.

Q. In the bark-tanned state, after the application of the fat liquor to them, what was their condition, as to their being hard, stiff, or squeaky, and as to their suitableness for gloves?

A. It made them soft and removed the squeaking from the leather. It prepared the leather and made them ready, with the exception of mooning, for mittens and gloves.

Q. At what place did you first make use of fat liquor in treating bark-tanned sheep and lamb skins?

A. At the village of Broadalbin, in Fulton County; is sometimes called "Fonda's Bush."

Q. When first treating these skins with fat liquor, was any person engaged with you in such treatment; and, if so, who?

A. There was; Mr. Timothy Cornwall, as a partner.

Q. Will you state, if you can, about the number of bark-tanned sheep and lamb skins treated by you in the manner you have stated, the first year after commencing?

A. I could not tell definitely. I had about fifty dozen. In the year 1854 and 1855, I had about fifty dozen. I could not tell definitely, but I should think about fifty dozen.

Q. State how you treated these fifty dozen.

A. I had fat liquor to all of them, but in different shapes. To some I applied the fat liquor cold, others I heated; to some I applied soap with the fat liquor, to some I added oil. That is all I done to skins that year.

Q. When next did you prepare bark-tanned sheep and lamb skins for the manufacture of mittens and gloves, after the year 1854 and 1855?

A. In 1856.

Q. When next?

A. In 1857.

Q. When next, after 1857?

A. I did no more for myself after 1857. The first after that I prepared liquor, or assisted in preparing liquor, for P. C. and D. G. Heacock, of Kingsboro', Fulton County. This, I think, was in the year 1862.

Q. When next, if at all, after 1862?

A. I did no more at preparing, myself.

Q. State as near as you can the number of bark-tanned sheep and lamb skins treated by you in 1856 and 1857, and the manner in which you treated them, and the place where.

A. I could not tell definitely; of different kinds, it must have reached two hundred dozen. I treated a part with fat liquor alone. They were dried—the skins were dried—staked and mooned, or pared, as
108 some call it, then they were ready to cut up. Skins were prepared with water, fat liquor was heated, and skins were put into the fat liquor. Some skins were put into fat liquor dry, the fat liquor being reduced with water. I mean by preparing skins in water, I dipped them in water, then piled in a pile of flats smoothed out. Remaining in a pile from ten to twelve hours before putting them into fat liquor; remained in the fat liquor long enough to take up a good share of the fatty substance; it might be thirty minutes; can fix no definite time; think that about the time. Then the skin is taken out and dried, staked, pared, or mooned. All skins, however, are not treated alike. What I mean by "all are not treated alike" is for heavy gloves. I did not pare or moon them, but only stake them. Skins applied to fat liquor dry, were subsequently treated the same as the others; that is, they were put into fat liquor, and after remaining in the fat liquor some thirty minutes, they are taken out, dried, staked, pared or mooned.

Q. State as near as you can the condition of the fat liquor, as to temperature, when applied to the skin.

A. I cannot describe it by degrees, but it was made hot—warm—but not scalding hot. It was then ready for the skins.

Q. When hot—warm—and ready for the skins, as you have stated, could a person work in it comfortably with the naked hands or feet?

A. They could not until the skins had gone in and cooled the liquor.

Q. About what proportion of the skins treated by you in 1856 and 1857 were treated with fat liquor, as you have stated, without any of the other ingredients?

A. Not to exceed one-third of what I dressed. I suppose about one-third; it is so long ago I cannot tell definitely.

Q. How many of the skins treated by you in 1856 and 1857 were treated with fat liquor with some other ingredients added to the fat liquor?

A. I should think two-thirds of what I dressed.

Q. State specifically the manner you treated bark-tanned sheep and lamb skins in 1856 and 1857, when you treated them with fat liquor and some other ingredients mixed with it.

A. While fat liquor was being heated I put in soft soap, other times I put in salt; sometimes alum, sometimes oil; when sufficiently hot the skins were put in; left in about thirty minutes, sometimes more—an average of about thirty minutes. The skins are then taken out, dried, staked, and finished as before; some were mooned and some were not, according to the use I wish to put them to.

Q. From what circumstances or condition of the skin, if any, did you determine upon the use of fat liquor alone, or its use with some one or more of the other ingredients, as stated by you?

(Objected to by plaintiff's counsel.)

109 A. Skins, light weights, light tannage, are suitable for fat liquor alone. Skins with heavy tannage, old skins or hides, damaged skins, by curing or tanning. I found it useful to add other materials or ingredients, according to the condition of the skins.

Q. What circumstances or condition of the skin, if any, required the use of soap with the fat liquors, and what the use of salt, and what the use of oil?

(Objected to by plaintiff's counsel.)

A. A thick, stubborn skin requires the use of soap. I use salt to open the pores and soften the skin. Not any condition or circumstance of the skin requires the use of oil. I used it to make a little different leather.

Q. In the treatment of these skins by you in 1856 and 1857 in the manner you have stated, with fat liquor, either with or without the other ingredients, what effect, if any, was produced upon the skins?

A. It made the skins soft similar to kid-leather, and removed the squeaking of the leather.

Q. For what purpose were the skins so treated by you useful and suitable after being so treated?

(Objected to by plaintiff's counsel.)

A. I used them for gloves, mostly.

Q. For what purpose, if any, were these skins, after being treated as you have stated, useful and suitable? State if you know.

A. To manufacture into gloves and whip-lashes.

Q. What kind of gloves?

A. Light button-tops, lined or unlined gauntlets, and Plymouth gloves.

Q. What did you do with the gloves manufactured by you from the skins treated by you, as you have stated, in 1856 and 1857?

(Objected to by plaintiff's counsel.)

A. I sold them with other goods.

Q. When did you sell them?

(Objected to by plaintiff's counsel.)

A. I sold them in the years I dressed them, in 1856, 1857, and 1858, perhaps; think I carried over some of them.

Q. Why did you not continue the manufacture of goods from skins treated as you have described after the year 1857? State the reason, if any existed.

(Objected to by plaintiff's counsel.)

A. I could buy imported gloves cheaper than I could get these up.

Q. Did that state of things exist prior to 1857, and when was it that you could first buy imported gloves cheaper than you could make these?

(Objected to by plaintiff's counsel.)

A. Not to my knowledge. In the summer and fall of 1857.

Q. When did it first occur that you could buy the imported gloves cheaper than you could make these?

(Objected to by plaintiff's counsel.)

110 A. In the summer and fall of 1857.

Q. Were the imported gloves referred to by you similar to the gloves made from the bark-tanned sheep and lamb skins treated by you as before stated?

(Objected to by plaintiff's counsel.)

A. The button-tops were.

Q. Can you state whether or not there were large importations of the imported goods referred to by you in the summer and fall of 1857?

(Objected to by plaintiff's counsel.)

A. I don't know when they were imported, but I found them plenty in market in 1857.

Q. Do you mean in the markets where the mittens and gloves manufactured in Fulton County are usually sold, or in part sold?

(Objected to by plaintiff's counsel.)

A. I found plenty in Boston and New York.

Q. At what price were the imported gloves mentioned by you sold in markets where gloves manufactured in Fulton County were sold in 1857?

(Objected to by plaintiff's counsel.)

A. The avarage was about four dollars seventy-five cents per dozen.

Q. During the years 1856 and 1857, and until the imported gloves referred to by you became plenty in market, in the summer or fall of 1857, what had been the market-value per dozen pairs of the gloves made from the skins treated by you in the manner you have stated?

(Objected to by plaintiff's counsel.)

A. They were worth about six dollars.

Q. Please state specifically how you prepared, or helped prepare, for Messrs. R. C. and D. G. Heacock, of Kingsboro, the liquor heretofore spoken of by you as prepared for them for the treatment of bark-tanned sheep and lamb skins in 1862, or about that time.

(Objected to by plaintiff's counsel.)

A. I told Mr. Heacock what to get, and what to do with it. He brought to me heated fat liquor; was at their shop in Kingsboro. The skins were put into the liquor. One of his hired men got into the tub barefooted and tread the skins. The skins were then taken out and dried. That is as far as I knew about them until they were in gloves.

(Plaintiff's counsel objects specially to what witness says he told Mr. Heacock, and moves to have that stricken out of his answer to the last question, if the objection to such question is overruled.)

Q. Was there any other ingredient added to or mingled with the fat liquor used by Messrs. Heacock on this occasion?

(Objected to by plaintiff's counsel.)

111 A. Not that I know of.

Q. State the kind and condition of the skins treated on this occasion with fat liquor.

(Objected to by plaintiff's counsel.)

A. They were bark-tanned sheep-skins; having been wet with water, I put them into a tub which contained heated fat liquor.

Q. State as near as you can the number of skins treated on this occasion.

A. That is guess-work; I put into the tub two dozen; there were a number of dozen more put in by their man, but how many I don't know.

Q. Did you see Messrs. Heacock treat any more bark-tanned sheep and lamb skins in fat liquor? and, if so, state the quantity, and when, and the manner of treatment.

A. The next winter or spring I saw some bark-tanned sheep-skins in a tub where was heated fat liquor and soap. How many I don't know; there was a batch, perhaps a couple of dozen.

Q. If you have sold for Messrs. Heacock mittens and gloves of their manufacture at any time, please state the years that you sold such goods for them.

(Objected to by plaintiff's counsel.)

A. I commenced selling goods for them in the year 1861, and sold for them I think eight years in succession, including the year 1869.

Q. Please state what kinds of goods they furnished you with for sale

during the time you sold for them, and the kinds of leather or material such goods were made from.

(Objected to by plaintiff's counsel.)

A. Oil and kid dressed deer-skins. Oil-dressed patna kips, oil-dressed hog-skins, oil-dressed sheep-skins, bark-tanned horse-hides, calf-skins, sheep and lamb skins, kid-leather and Cape of Good Hope skins. The kinds of goods were gloves and mittens.

Q. Were the gloves and mittens furnished you for sale by them which had been made from bark-tanned sheep and lamb skins made into mittens and gloves in the bark-tanned state, or had they been subjected to some treatment or process before being made into mittens and gloves?

(Objected to by plaintiff's counsel.)

A. Two kinds of the goods had been applied by fat liquor, or fat liquor applied to them; one was a button-top and the other a Plymouth glove.

Q. State as near as you can the quantity of gloves furnished to you by them for sale, during the time you sold goods for them, of the kind stated in your last answer.

(Objected to by plaintiff's counsel.)

A. I can't tell the first year anything about it. The second year I sold gloves made of that leather. I had about forty dozen of the Plymouth gloves. How many button-top I can't say; I can't tell as
112 to the third year. Had some of the gloves for three or four years, but can't tell how many.

Q. State whether or not you sold the gloves of this kind mentioned by you.

(Objected to by plaintiff's counsel.)

A. I sold all that came into my hands.

1873, Feb. 25. Parties appeared pursuant to adjournment, when—

JAMES L. NORTHRUP was recalled, and further testified on the part of defendant, as follows:

Q. State whether or not you had any knowledge of the use of fat liquor for bark-tanned sheep and lamb skins, or other skins, in preparing them for mittens and gloves, or otherwise, prior to the year 1854 and 1855; and, if you had any such knowledge, state in detail what it was.

(Objected to by plaintiff's counsel.)

A. I did have such knowledge in the year 1849 and 1850. My attention was called to the use of fat liquor in finishing leather by a man in my employ by the name of Henry Laufer. He wished me to get some fat liquor to finish some skins he was currying; first, calf-skins, after that, bark-tanned sheep-skins. I got the fat liquor. He used it and afterwards showed me skins. The skins were very much improved; made soft and pliable.

(Plaintiff's counsel now moved to strike out so much of the witness's last answer as relates to the conversations and communications between the witness and Henry Laufer.)

Q. State if you know how the fat liquor was applied to these skins.

A. I did not see it applied.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Please state whether the bark-tanned sheep and lamb skins treated by you with fat liquor in the year 1856 and 1857 were treated in the same manner substantially as those treated by you in 1854 and 1855.

A. They were substantially the same as in 1856; I don't now remember treating any in 1857.

Q. What was the cost per dozen skins of the leather produced by you of the bark-tanned sheep and lamb skins at Broadalbin, in the manner described by you on your direct examination?

A. I could not now tell.

Q. Where did you heat the fat liquor used by you at Broadalbin, as described by you on your direct examination?

A. The first on a stove in the currying-room in the tannery. The next was on a large stove in the beam-shop of the tannery.

Q. What kind of a stove was the first one spoken of by you?

A. An old-fashioned bake-stove, with a pot-hole on the top.

Q. In what kind of a vessel did you heat the liquor and what was its capacity or size?

113 A. An ordinary copper boiler, holding about four pailsfull.

Q. How long did you use this stove and boiler in the place described?

A. In treating one batch or lot.

Q. Please describe the stove and vessel used by you for the purpose afterwards.

A. Was a large box-stove, with a hole in the top for the kettle.

Q. In treating the bark-tanned sheep and lamb skins at Broadalbin, as described on your direct examination, did you sometimes use fat liquor alone, sometimes used fat liquor with one of the other ingredients mentioned by you, and sometimes with more than one of the other ingredients?

A. I sometimes used fat liquor alone; sometimes I used one ingredient with it; at other times I used more, according to the condition of the skin and the purposes I wanted to use them for.

(Plaintiff's counsel objects to that part of the witness's answer which is not directly responsive to the question.)

Q. How many other ingredients did you use in connection with fat liquor? Name them all.

A. Usually two kinds, but sometimes four. I used alum, salt, soft soap, and eggs.

Q. Did you ever use all of these ingredients together in connection with fat liquor?

A. I think not.

Q. How many of them did you use together?

A. I don't think over two at any one time.

Q. Please name the two to which you refer in your last answer.

A. Salt and soft soap.

Q. Did you ever use eggs in connection with fat liquor?

A. I think I did—a few—once.

Q. Did you use alum in connection with fat liquor?

A. I did a few times.

Q. Did you use eggs when you did not use them in connection with fat liquor?

A. Yes, sir.

Q. Did you use eggs with any or all of the other ingredients you mentioned, without the fat liquor?

A. We used eggs with soap sometimes.

Q. And did this varied use of the ingredients with fat liquor, as now described by you, continue during the period spoken of by you on your direct examination, of the use of fat liquor on bark-tanned skins at Broadalbin?

A. It did not.

Q. How long did it continue, and what time did it cease?

A. I did not use it at all, that I remember, after the first winter.
Q. What is it you mean that you did not use after the first winter?
A. Alum.
Q. Did you use the other ingredients mentioned more or less during the whole period spoken by you on your direct ?
A. Most of the time I used salt and soap.
Q. Do you know where the imported goods spoken of by you on your direct examination, as found in the market in 1857, came from?
A. All I know is, they were said to be imported.
Q. How long did that kind or class of glove continue in the market?
114 A. Have seen them several years since, and also in the year 1871.
Q. Do you know from what skins the leather of these gloves was made?
A. In my judgment, sheep and lamb skins.
Q. Do you know how the skins were tanned, dressed, or prepared for gloves?
A. I should think they were bark-tanned, but further than that I don't know.
Q. Please state where you saw this kind of glove in 1871.
A. At my store, 390 Broadway, New York.
Q. Where did they come from, if you know?
A. I think they come from John M. Davis & Co., in New York.
Q. Please state who brought them to your store.
A. They were brought there by two parties from Davis & Co. to be packed, but I cannot give their names.
Q. How many of that kind were brought there by them?
A. I could not say; only a dozen or two.
Q. Please mention where you saw them in 1857.
A. At the store of Atterbury, Hill & Co., Broadway, New York, number about 200 Broadway; also at the store of Hartwell, Dudley & Co., in Providence, Rhode Island.
Q. Were all these imported goods you speak of of one color?
A. The button-tops were substantially of the same color, being a dark tan-color, called "dog-skin."
Q. What color were the others, not button-tops?
A. The body of the glove was also a tan-color, made with flesh-side out, and the band around wrist was of another color. Some were yellow, and some of a drab color.

On his redirect examination the witness further testified as follows, to wit:

Q. Where is Henry Laufer now? State, if you know.
(Objected to by plaintiff's counsel.)
A. I do not know where he is now. He left us betwixt daylight and dark, and I have never seen him nor heard from him since.
Q. When requested by Mr. Laufer to provide fat liquor for treatment of skins, as you have stated, what did you first provide?
(Objected to by plaintiff's counsel.)
A. Sad oil.
Q. What then?
(Objected to by plaintiff's counsel.)
A. He said that was not what he wanted. He wanted fresh liquor from deer-skins; looked like cream. I got that, and he said that was what he wanted.

(Plaintiff's counsel moved to strike out so much of witness's last answer as gives a conversation and communication between witness and Laufer.)

Q. Without stating the conversation between Laufer and yourself, please state what you did provide for his use in the treatment of the skins pursuant to his instructions, and what he used in treating said skins.

(Objected to by plaintiff's counsel.)

115 A. I provided fat liquor and some soft soap. I did not see them treated.

On his recross-examination by plaintiff's counsel the witness further testified as follows:

Q. Was this man Laufer one of your employees?

A. He was under my employ.

Q. How long had he been with you when he left, as you have stated?

A. I think between five and six months.

Q. About what was his age, as nearly as you can tell?

A. Betwixt 35 and 40 years of age.

Q. Do you know where he came from to you?

A. I do not, only what he said.

On reading the foregoing testimony, the witness, of his own motion, makes the following correction:

First. The place where I saw those imported goods was Providence, and not Boston, as stated in my direct examination.

Second. I am not certain of treating any skins in 1857, as stated in my direct examination; my impression now is it was in the fall and early winter of 1856.

JAMES S. NORTHROP.

Subscribed and sworn this 25th day of February, 1873, before me,

J. WENDELL,
Special Examiner.

JONATHAN RICKETT, a witness produced, sworn, and examined on the part of the defendant, testified as follows, to wit:

I reside in Johnstown, Fulton County; I have resided here about thirty-three years; my business has been manufacturing gloves and mittens. I also during this time manufactured materials from which gloves and mittens were made. Previous to Johnstown I resided in Yoeville, in England; am an Englishman by birth; am in my fifty-fourth year of age. I learned the trade of manufacturing kid leather and manufacturing them into mittens and gloves before I came to this country. In my business of manufacturing since I came to Johnstown I have used both bark-tanned sheep and lamb skins. This was in 1850 and 1851. The first lot were nineteen hundred sheep-skins with grain off, called splits. I got them in the bark-tanned state, ready for book-binding. In that state they were not suitable for mittens and gloves. They were squeaky, bad color, and dirty, and were neither hard or soft; medium. I got Samuel Dodge, senior, who was then in my em-

116 ploy, to work them over. He worked them over through fat liquor, eggs, and soap; what else was put in I don't know; that is all I furnished. I procured the fat liquor at my own skin-mill, made up into a warm liquor, skins put in and tread. I could not state the length of time they were kept in; were then taken out and hung up to dry; then finished them, staked them. The application of this fat liquor to the skins made them soft, took out the squeak, made them cleaner

and of better color. They were then finished, and were suitable for gloves. Then made them up into gloves and mittens, and sold them in New York, Philadelphia, and Boston. Think I sold them the same year; may have kept over some of them. I made between four and five hundred dozen pairs of mittens and gloves out of that lot of skins.. I bought another lot of from one to two hundred dozen of bark-tanned lambskins of Barbor, Pritcher & Brand, of New York. These lambskins had the grain on. This was a year or two after we had worked off the other lot. These were in the rough, and were not fit for mittens and gloves in that condition; were hard and unfinished, and were squeaky. I told Mr. Samuel Dodge, senior, the defendant, to work them over just as he did the other lot. I furnished everything. He would go to the mill and get whatever he wanted. He got fat liquor at the mill and soap and eggs at the house or store. The effect produced on the skins was, it softened them so that I made them up; it did not take the squeak out of some of them; was a pretty hard lot, and could not get the mall right. Some of them had the scab on the back; could not make leather of them any way; were but very few of such, however; all the rest of these skins, except those few, were suitable for mittens and gloves after this treatment. I made them up into mittens and gloves, and sold them at home, in Boston, New York, and Philadelphia; I cannot state the number of dozen. This fat liquor was warm when applied. I fix the year by the time Mr. Dodge came to work for me and when he left. He must have worked for me somewhere about five years; think he quit about the year 1853. In my business in manufacturing mittens and gloves since I came to Johnstown I used buck, sheep, patney, hog, goat, elks, and bless bok, beside these bark-tanned sheep and lamb skins. All these skins, except the bark-tanned, I dressed from the raw. In my business in dressing skins from the raw, for mittens and gloves, I used fat liquor; have used it for twenty-five years.

Q. For what purpose did you use fat liquor in the process of dressing skins for mittens and gloves?

(Objected to by plaintiff's counsel.)

117 A. It was for softening them. Sometimes in scouring them they get hard, and we mill them over; put them in fat liquor again; it is for softening the leather. I cannot say that I used or applied fat liquor on all kinds of skins used for mittens and gloves. This fat liquor was applied after the skins were scoured clean; some few I dressed all through with it.

Q. State, if you know, what effect the application of fat liquor applied to leather for mittens and gloves produces, if any.

A. It makes the leather soft, and brings it up where it ought to be in the first place.

Q. State, if you can, when you first ascertained the effect produced by fat liquor applied to leather for mittens and gloves?

A. Over thirty years ago. Ever since the year thirty-nine, the first year I came here. I cannot tell how frequently; cannot tell about how frequently. We use fat liquor on skins when they are hard and not fit to cut up. I have made kid-leather in my business of glove-making since I came to Johnstown.

Q. State when first.

(Objected to by plaintiff's counsel.)

A. Think in 1848.

Q. State how long you continued to make kid leather.

(Objected to by plaintiff's counsel.)

A. I continued four or five years.

Q. State, if you can, how this kid leather was made.
(Objected to by plaintiff's counsel.)
A. It was made with alum and salt, eggs and flour.
Nothing else?
Also used oil. I don't recollect anything else.
Q. Do you know what, if anything, was applied to these kid-skins after they were finished?
A. Was a gum used afterwards. I do not know what the gum was made of. This is one of the secrets of the business. Mr. Dodge, senior, the defendant, made this gum. He done the work to these kid-skins.
Q. State, if you know, what the gum was applied to the skins for.
(Objected to by plaintiff's counsel.)
A. Was for softening them.
Q. What effect was produced upon the skins by the application of the gum?
(Objected to by plaintiff's counsel.)
A. It made them softer and plumper.
Q. What did you do with the kid-skins dressed by you during the years mentioned?
(Objected to by plaintiff's counsel.)
A. Some I cut into gloves and some I used for binding. I could not state the number of dozen of gloves made of these kid-skins. What I did make I sold.

On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. On your direct examination you stated that you learned
118 the trade of manufacturing kid leather. Do you include in the term "manufacture" the entire preparation of the skin for mittens and gloves?
A. I dressed the skins and cut the leather from beginning to end.
Q. Does not that include the application of gum spoken of by you?
A. Gum is used on part of them.
Q. Did you learn the composition and use of gum applied as stated by you?
A. I do not know the composition of gum, but have used it.
Q. Did you ever use it before Dodge worked for you?
A. Yes, sir.
Q. Then you did not learn that part of the trade of kid-dressing involved in the composition of this gum?
A. It does not belong to kid-dressing.
Q. What do you mean by the expression "it is one of the secrets of the business?"
A. Every one who makes up this gum has a way of his own, and does not belong to the trade at all of cutting and dressing.
Q. Then you mean the different kinds of gum used by different dressers is prepared by each in his own way?
A. Yes, sir.
Q. Is gum used on all kid leather made into mittens and gloves?
A. No, sir.
Q. Was it used by you and by Mr. Dodge in your employ as a surface-dressing?
A. Yes, sir.
Q. To which side of the skin is it applied?
A. On the grain-side.
Q. Is it applied to any skins other than those colored black?

A. Not to my knowledge, and it is applied after the coloring.

Q. Under the term "kid-leather" what kind of skins do you include?

A. Sheep, lamb, kid, goat, colt, and calf skins.

Q. Do you mean domestic or imported sheep or cape sheep?

A. I mean both.

Q. When these different skins are tanned or dressed in alum, salt, egg, flour, and oil, the leather produced is called kid?

A. Yes, sir.

Q. What kind of oil is used in the tanning and dressing of kid?

A. I don't recollect the name.

Q. About what proportion of kid-leather made into mittens and gloves is colored black?

A. About one-third.

Q. Have you mentioned on your direct examination all the lots of bark-tanned sheep and lamb skins treated for you by Mr. Dodge while in your employ?

A. Yes, sir.

Q. Were the first lot spoken of by you as treated by him what are called "fleshers" without the grain?

A. Yes, sir.

Q. Please state how these fleshers are produced.

A. The skin in its raw state is put into lime and limed up pretty high, so as to swell them up, then they are split in two, the grain from the flesh, making two skins out of one.

Q. Did you see the liquor prepared for that treatment by Mr. Dodge?

A. Yes, sir.

Q. If so, what did you mean by saying on your direct "what else he put in I don't know," after enumerating fat liquor, eggs, and soap?

A. He mixed it up while I was putting in the skins, so I had no chance to see what else be put in.

119 Q. Were this first lot, all treated by Mr. Dodge as you have described, all in one batch or in different batches, and if in different, about how many?

A. Were in different batches, and about ten or eleven dozen in a batch.

Q. And about how long a period of time did the whole cover?

A. That I could not tell.

Q. Please state about how long according to your best recollection and knowledge.

A. I could not do it—might be three months.

Q. What season of the year?

A. Was either in the spring or fall; was cool weather; we worked by candle-light.

Q. Were you present at every batch so treated; and if not, about how many were you so present?

A. I was present when the first batch was treated; because it was an experiment to me, but am not able to state how many times after that.

Q. Then as to all the batches, except the first, you do not know, of your own knowledge, what ingredients were used, and as to whether the liquor was applied warm or cold?

A. I don't recollect that I was present, and cannot tell.

Q. Were some of these batches subjected more than once to the liquor?

A. Part of the batches I think were.

Q. Please state why they were subjected to the liquor the second time.

A. Because they were not soft enough the first time.

Q. Please state, as near as you are able, the length of time the skins were kept in the liquor when first immersed.

A. About an hour.

Q. About what portion of this time were they trodden by the feet?

A. About half of that time.

Q. After being subjected to the liquor, and before making them up into mittens and gloves, were they mooned?

A. Yes, sir; and finished by hand.

Q. Please state what else, if anything, was done to them after being subjected to the liquor before they were made into mittens and gloves.

A. They were first hung up and dried, then cooled down, staked, and what was right was finished by the mooning-knife and pumice-stone block.

Q. Please state what is the process of pumice-stoneing.

A. It is what we call finishing—giving it a fine face, rubbed down by hand by a pumice-stone.

Q. Please state what was done with those that were not right.

A. Gave them another dip—that is, put them in the liquor again—and after coming out the second time were subjected to the same process as before stated.

Q. Into what class of gloves was this leather made?

A. Plymouth Montpeliers and men's lined and unlined mittens. Montpeliers were then called "worked backs."

Q. Were these gloves, as compared with other kinds, coarse or fine?

A. Coarse.

Q. Please state about how long after the purchase of the first lot did you purchase the second lot?

A. Not more than two years—about two years; not longer than that.

120 Q. Were these subjected to liquor in one batch, or more than one?

A. Several batches.

Q. Covering about how long a time?

A. I don't recollect; I gave the whole over to Mr. Dodge, and he done them at his own pleasure.

Q. Are you able to state at what season of the year?

A. I think in the summer; I think I bought the skins up in the spring.

Q. Were you present at the treatment of any of these batches?

A. I cannot say.

Q. Then you are not able to say, of your own knowledge, what ingredients were used, or whether the liquor was applied warm or cold?

A. Of my own knowledge, I do not.

Q. You stated in substance on your direct, that from some of these the liquor treatment did not remove the squeak. Please state about how many.

A. That was the scab-backs. I don't know how many there were.

Q. Did the scab-backs squeak worse than the others, before being treated in fat liquor?

A. Not that I am aware of.

Q. Were any of these batches of the second lot subjected more than once to fat liquor?

A. I think they was.

Q. That is to say, some of the skins treated by him were returned to him to be further treated on account of being defective and unsuitable for gloves without further treatment?

A. Yes, sir.

Q. Have you made the bark-tanned sheep and lamb skins into gloves and mittens in the bark-tanned state?

A. Yes, sir.

Q. Have you since Mr. Dodge left you, and if so, to what extent, and into what class?

A. Yes, sir; made several hundred dozen more of gloves than mittens, gauntlet gloves, coarse goods, the same as all bark goods.

Q. Have you since Mr. Dodge left you manufactured any bark-tanned sheep or lamb skins into gloves or mittens prepared like the two lots treated by Mr. Dodge, spoken of by you?

A. I manufactured a lot prepared by Mr. Dodge two years ago, but cannot say what ingredients he used, as I was not present. That is the only lot since Mr. Dodge left me.

Q. Were you examined as a witness in a suit between this plaintiff as plaintiff and Isaac V. Place and John W. Place as defendants before Judge Woodruff, tried at Albany in Oct., 1870?

A. Yes, sir.

Q. Did you then testify, in substance, that Dodge did not produce for you any leather from bark-tanned sheep and lamb skins with the grain on?

A. I think I did.

Q. You speak in your direct of having used buck, sheep, patney, hog, goat, elk, and bless bok, and of having tanned from the raw. Do you mean that you tanned from the raw these several varieties?

A. I do.

Q. Did you tan them by the process known as oil tanning or dressing?

A. Yes, sir.

Q. Did you tan any by the bark-tanned process?

A. No, sir.

Q. In speaking in your direct of having used fat liquor in the tanning or dressing of skins, do you refer to its use in the oil tanning or dressing?

121 A. Both in the oil tanning and dressing, through fat liquor alone.

Q. By dressing through with fat liquor alone do you refer to what is known as "Indian dressing?"

A. No, sir; they are very different.

Q. Are not the skins dressed in fat liquor, known in the trade as Indian dressed?

A. Are known as an imitation of Indian dressed, and are called fat-liquor dressed.

Q. Are they not frequently called "Indian dressed?"

A. Yes, sir.

Q. Are they not sold in the market under the name of Indian dressed gloves?

A. Some do sell them as Indian dressed, and some sell them as fat-liquor dressed.

Q. You sometimes have in market, do you not, the real Indian dressed skins, that is to say, skins dressed or supposed to be dressed by Indians, but in less quantities now than formerly?

A. Yes, sir.

Q. And the skins spoken of by you as dressed in fat liquor are an imitation of the real Indian dressed, and are frequently called in the trade and market, Indian dressed?

A. Yes, sir.

Y. Are the fat-liquor dressed skins taken in the raw, and tanned or dressed in fat liquor?

A. Yes, sir.

Q. In speaking of the use of fat liquor in connection with oil-dressed skins, do you refer to cases where the skin has been overscoured, badly milled or drenched in rain?

A. To all three.

Q. After the use of fat liquor in such cases, are the skins scoured again?

A. Yes.

Q. Might not these effects for which fat liquor is used be remedied by remilling the skin in oil?

A. In some cases.

Q. Would not the remilling be equally effective for the purpose?

A. In some cases it is very injurious.

Q. Are there cases of these defects spoken of where fat liquor does not answer the purpose?

A. Fat liquor will answer the purpose if they follow it up. There are none where they follow it up.

Q. Do you not sometimes remill them after applying fat liquor?

A. As far as I am concerned, I never have.

Q. What did you mean on the direct, by saying "sometimes fat liquor won't do it, we have to remill them?"

A. I mean for the reason it takes so long to do it in fat liquor it saves time and expense to mill them over rather than fat liquor.

Q. The kid leather (if I understand you correctly) is produced by dressing skins with eggs, salt, alum, flour, and oil?

A. The leather is produced by alum and salt.

Q. Mr. Dodge, senior is an Englishman, is he not, and came from the same town in England you did?

A. Yes.

On his further direct examination he further testified as follows:

122 Q. You stated on your cross-examination that kid leather is produced by the use of alum and salt. Please explain what you mean by that, and how it is produced by alum and salt.

A. The skin after it has been worked and thoroughly cleansed in its different branches is put into an alum and salt liquor, warm, hot as you can bear your hands in, and there they are stirred up until they are leather.

Q. State what is done to the skin before they are put in alum and salt liquor?

(Objected to by plaintiff's counsel.)

A. They are put into water and soaked till they are soft, they are then taken out and worked over the beam on the flesh side, then they are soaked in water, then drawn out and horsed up, that is hung over a wooden horse or buck, then hung on poles and put in sweat-room; they hang there till all the dirt works up on to the flesh; then they are worked over the beam again, put back into the sweat-house, then the wool is taken off from there, now they go into the lime, then they are worked out over a beam and cleansed, from that they go into a wheat-bran drench, from that they go into alum and salt.

Q. For what purpose are they put into the alum and salt liquor?

(Objected to by plaintiff's counsel.)

A. To make them into leather, as they were nothing but a felt before.

Q. State what is done with them after they are taken out of the alum and salt liquor.

(Objected to by plaintiff's counsel.)

A. They are put into a hot room and dried; after that they are taken down and soaked in water, then they are worked over the knee-stake, then put into a tub and tread up in eggs, flour, and oil liquor, all mixed up together, they are then hung up and dried again, then staked, ready for coloring and are colored, then finished and afterwards cut into gloves.

Q. In speaking of the dressing of these skins, do you refer to sheep and lamb skins?

A. Yes.

Q. In the dressing of these skins into kid leather, for what purpose are they put into the egg, flour, and oil liquor as mentioned by you?

(Objected to by plaintiff's counsel.)

A. To soften, feed, and plump them.

Q. What is the condition of the skin when dry after being made into leather by the salt and alum liquor, and before the application of the egg, flour, and oil liquor?

A. They are useless for glove purposes.

Q. Why useless?

A. Because they are full of alum and salt, and in a damp day the water will stand out on them, you can get no color in them.

Q. I was enquiring as to the condition of the skin when ready to put into the egg, flour, and oil liquor. State its condition at that time.

A. They were wet, and as far as they are in that state they are useless.

123 Q. Is there any salt or alum in them at that time?

A. There is a trifle; the object of soaking is to take that out.

Q. State their condition when dry, after having been soaked, and before putting them into the egg, flour, and oil liquor, as to being hard or otherwise.

(Objected to by plaintiff's counsel.)

A. They are hard and flat.

Q. On your cross-examination you spoke of a class of skins dressed in fat liquor alone, sometimes called Indian dressed skins, and sometimes called fat-liquor dressed skins. Please state what class of skins these are.

A. They are sheep-skins, buck-skins, and bless-bok.

Q. When dressed in this way what are they used for?

A. Gloves and gauntlets.

Q. Have you dressed these several kinds of skins in this way, in your business?

(Objected to by plaintiff's counsel.)

A. Yes.

Q. When first?

(Objected to by plaintiff's counsel.)

A. Twenty-one or twenty-two years ago.

Q. When again?

A. Dressed bless-bok, two years ago, and have dressed them between these times more or less all the while, both buck-skins and sheep-skins.

Q. State in detail the process by which you dressed these several kinds of skins, called by you fat liquor dressed during the past twenty-one years.

(Objected to by plaintiff's counsel.)

A. They are dipped in a rich hot fat-liquor, then taken out, and hung out and dried in the sun, then taken in and staked and dipped in fat

liquor again; then the same process repeated over again; when leathered enough then they are scoured out, then hung up and dried, staked, ready for use.

Q. In this mode of dressing, is there any oil used except what the fat liquor contains, or are the skins milled in oil? State if you know.

(Objected to by plaintiff's counsel.)

A. There is no oil used beside fat liquor, nor are the skins milled in oil.

Q. State if you know whether or not what you call fat-liquor dressed skins have been produced and made into gloves extensively or otherwise in Gloversville and vicinity; and, if so, the length of time they have been produced and manufactured into gloves.

(Objected to by plaintiff's counsel.)

A. They have, for over twenty-five years, more or less every year.

Q. On your cross-examination you stated that you sometimes milled skins over instead of subjecting them to fat liquor, because it could be done much sooner. If in this statement you had reference to any particular class or kind of skins, please state the class or kind.

A. Deer-skins, from the fact they are sometimes hard, butts
124 and necks, and sometimes the oil don't penetrate them, and are left in almost a raw state.

Q. Is this the case sometimes with an entire lot, or confined to a few skins in a lot?

A. Sometimes only a few, and sometimes quite a quantity.

Q. State, if you know, whether or not in the oil-dressing of skins for mittens and gloves, for the last twenty-five years in Gloversville and vicinity, fat liquor has been used generally to render the skins soft and pliable when they were for any cause too hard and stubborn for use.

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. In your statement on cross-examination, that you sometimes failed to render skins soft and suitable for use by the application of fat liquor, and that such skins were scab-backs, please explain what you mean by the term "scab-backs."

(Objected to by plaintiff's counsel.)

A. That arises from diseased sheep. They have what is called the "scab;" it comes on the shoulders and on the back.

Q. Can such skins be made soft and pliable by any process?

(Objected to by plaintiff's counsel.)

A. Not the diseased parts.

Q. You stated in answer to a question on your cross-examination that, when a witness in the case of Russell against Isaac V. and John W. Place, tried in Albany, you testified that Dodge produced for you no leather from bark-tanned sheep and lamb skins with the grain on. Please explain, if you, can why you so testified.

A. I had forgotten about the lot of skins I had bought of Barber, Pritcher & Brand.

Q. When was it that you made mittens and gloves of bark-tanned sheep and lamb skins in the bark-tanned state?

A. During the late war and since, beginning in 1861 and 1862.

On his recross-examination by plaintiff's counsel, he further testified as follows:

I mean by knee steak a knife in an upright stand, and the skin is drawn and broke over this knife. Sometimes the knee is used in this process, and that is the reason why it is called a "knee steak."

Q. When the skin, in the process of kid-dressing, is put into the tub with the egg liquor, how long is it kept in there, and how long is it trodden?

A. From fifteen to thirty minutes.

Q. Is there any squeak in the skin or leather when it is put into the tub?

A. Yes; so you can hear it from one room in the other, and this process of dressing takes them out. This squeak is in them when they are damp, also when they are dry the squeak is in them, while the alum and salt are in them; that is, before they are put into the tub of liquor.

125 The kind of oil I put into this liquor was palm-oil.

Q. After coming out of the salt and alum, and being dried, will the skin or leather become damp if allowed to remain in that state?

A. That will depend where they are kept.

Q. Will it if kept exposed to the air?

A. Yes, sir.

Q. And, in such state, the leather is not fit for gloves?

A. No, sir.

Q. One object, then, of the egg-liquor process is to remove the alum and salt, and render the leather fit for gloves, is it not?

A. No, sir; it is not.

Q. Did you not so state in substance in your direct examination?

A. Not that I am aware of.

Q. Did you not state in substance, in your direct examination, that after taking the skins out of the alum and salt, you put them into the egg liquor to take out the alum and salt left in the skin?

A. No, sir; I said they were hung up to dry.

Q. Did you not state in substance, on your direct examination, that after the skins were made into leather by the alum and salt they were full of alum and salt, and that in a damp day water would stand out on them, and you could get no color in them?

A. I did so state, after they had been dried.

Q. Did you or not, in that connection, state in substance that they were unfit for mittens and gloves in that state, and that you put them into the liquor to take out the alum and salt?

A. No, sir; I did not; not in that way.

Q. Was there any alum or salt in the leather when put in the liquor?

A. They would taste a little salty. I think likely there was.

Q. Do you know whether there was or not? and, if so, state.

A. Yes; there was.

Q. Was it desirable to take that out before making them into mittens and gloves?

A. Yes, sir.

Q. What was the cause of the dampness on the leather, on exposure to the air spoken of by you?

A. Salt that was in the skin.

Q. And so long as salt remained in the skin would there not be a liability to dampness?

A. Yes.

Q. In the case of skins, containing some salt, when subjected to the liquor, was there any salt remaining perceptible after going through the liquor process?

A. Sometimes there is, in skins recently dressed.

Q. How was it in this regard in your experience?

A. I don't know as I have had experience enough in that branch to observe the thing.

Q. In the alum-dressing, do you know what effect the alum produces on the skin?

A. Yes; it has a binding effect, and is an astringent.

Q. What effect, if you know, does the salt have?

A. The opposite of alum; one is binding and the other loosening. We use them in kid-dressing, mixed together.

Q. Are you a chemist, understanding these various processes spoken of by you, scientifically; or do you speak merely as a practical manufacturer?

A. I am no chemist; I speak from practice and observation.

126 Q. Are the Indian-dressed or fat-liquor-dressed skins spoken of by you tanned and dressed in fat liquor from the raw?

A. Yes, sir.

Q. What, if anything, is done to the skin before subjecting it to fat liquor?

A. It is soaked, broke, and frized; that is, the grain taken off; and breaking is taking off the flesh.

Q. Are the skins in the raw when put into fat liquor?

A. Yes.

Q. During the whole process of dressing skins in this mode, how many times are they subjected to fat liquor?

A. That would depend altogether on the richness of the liquor; would subject them from two to six times.

Q. Between each immersion, are the skins hung out and dried in the sun and staked?

A. Yes, sir; sometimes they are run in the mill dry, so as to make them stake out easy.

Q. Does the action of the fat liquor applied in the manner stated by you convert the raw skins into leather?

A. With the heat of the sun it does.

Q. After the last immersion in the fat liquor are the skins scoured?

A. Yes.

Q. Was the fat liquor warm or cold when the skins were immersed?

A. Warm.

Q. In all cases?

A. No, sir; every one does it according to his own notion.

Q. Is fat liquor ordinarily used in oil-tanning, or is it only in the cases where there is some defect in the ordinary process, such as bad milling, overscouring, or drenching in rain?

A. I used it in these three instances, and one other; that is, where they are mildewed; these four are all. Fat liquor is not ordinarily used in oil-tanning.

Q. Is it this kind of use that you speak of in your direct when you say it has been used for the last twenty-five years?

A. Yes, sir.

Q. Can scab-back skins be rendered soft in the parts not diseased?

A. Yes, sir.

Q. Do you mean to be understood as testifying that you never sent back any but scab-back skins for further treatment on account of defects in the first process?

A. No, sir; I do not.

Q. Were the mittens and gloves manufactured by you from skins in the bark-tanned state, of a coarse and cheap quality?

(Objected to by defendant's counsel.)

A. They were.

On his redirect examination by defendants' counsel the witness further testified as follows:

Q. In dressing kid with alum and salt, what treatment, if any, is the skin subjected to, to remove the salt from it?

(Objected to by plaintiff's counsel.)

A. They are soaked in water from eight to ten hours. John Filmer was in my employ at the time when Mr. Dodge worked for me, and worked with Mr. Dodge.

Q. Was John Filmer in your employ at the time Mr. Dodge dressed the bark-tanned skins for you spoken of by you?

(Objected to by plaintiff's counsel.)

127 A. He was.

Q. State if you know whether he worked with Dodge in the dressing of those skins.

A. He did.

On his recross-examination, by plaintiff's counsel, the witness further testified as follows:

Q. After the skins were soaked in water for eight or ten hours, as you have just stated, if dried and submitted to the action of the air, would they become damp?

A. I think they would a little, very trifling.

Q. Would some be more liable to dampness than others?

A. That might be.

Q. Which lot of bark-tanned skins do you refer to, when you say Filmer was present in dressing with Dodge?

A. The first lot I know he was with him, and I think he was the second.

Q. Have you and Mr. Dodge and Mr. Filmer talked this matter over since you have been in attendance upon this examination?

A. No, sir.

Q. Have you talked with Mr. Dodge, the defendant, on the subject?

A. Nothing more than he told me that he wanted me as a witness.

(This answer was taken under objection by plaintiff's counsel as not responsive to the question, but insisted on by defendants' counsel.)

Q. Have you talked with Mr. Dodge or Mr. Filmer about the latter being in your employ when Dodge dressed the bark-tanned skins?

A. Mr. Filmer spoke to me, that is all.

Q. How long was Mr. Filmer in your employ at the time referred to by you?

A. I think he was to work for me four or five years; I cannot be certain as to time.

JONATHAN RICKETTS.

Taken, subscribed, and sworn this 6th day of September, 1872, before me.

J. WENDELL,
Special Examiner.

JOHN FILMER, a witness produced, sworn, and examined on the part and in behalf of the defendants, testified as follows:

I am 57 years of age. I reside in Gloversville, county of Fulton; have resided in this county nearly 43 years. My business is tanning of oil-dressed leather for mittens and gloves, and have been so engaged for upward of 40 years. At some time during that time I worked for Jona-

than Ricketts with Samuel Dodge, senior; commenced in 1841, and worked for occasionally till 1847. Then commenced work for one year. Then again in 1852 I worked for Ricketts 8 or 10 days. Then again by the year in 1854, worked out the year; done some work for him since.

Samuel Dodge, senior, was in Mr. Ricketts' employ in 1852, and
128 worked with me for him. During the time I worked for Mr. Ricketts in 1852 he dressed what was called bark-tanned sheep-skins. Mr. Ricketts got these bark-tanned sheep-skins in the rough, in the bark-tanned state. We mooned them, staked them, put them into warm fat liquor. Mr. Samuel Dodge, senior, and myself put them into the fat liquor. It was ordinary skin-mill fat liquor, such as is made at all the skin-mills. We also fat-liquored South American sheep-skin with the grain on, oil-dressed. We treated the bark-tanned sheep-skins by putting them into the warm fat liquor and stirred them up, and once in a while I saw Mr. Dodge get in and tread them; before they were so treated they were stubborn and squeaky. The effect of this treatment, what I saw of them, they were more soft and pliable; I don't know what use was made of them to my own knowledge. I presume there were three or four hundred of these sheep-skins. I never counted them. I have not worked with Mr. Dodge at any other time, but was out and in and saw him work.

On his cross-examination, by plaintiff's counsel, the witness further testified as follows:

This was in the month of January, 1852. The fat liquor used by us was scoured out by hand, and was not obtained by the ordinary mode of run'ing the mill. In obtaining fat liquor by scouring, we used the liquor warm. I do not know what ingredients, if any, Mr. Dodge used in the fat liquor. He did not use any as far as I know. All I did about it, was to aid him in putting the skins into the liquor.

On his direct examination, by defendants' counsel, the witness further testified as follows:

The fat liquor we used on these skins was obtained as follows: We used lye and water. We made liquor of potash and water, then put in the oil-dressed skins with the oil in, and soaked them. Then took them out and wrung them out by hand, with the aid of a wringing-machine, and the substance we wrung out made the fat liquor which we used. After the liquor was prepared I helped put the skins in, and helped Mr. Dodge take them out, but don't think I helped hang any of them up. Nothing but fat liquor was used, to my knowledge, in the treatment of these skins.

JOHN FILMER.

Subscribed and sworn this 7th day of September, 1872, before me.
J. WENDELL,
Special Examiner.

129 WILLIAM H. MONROE, a witness produced, sworn, and examined by and in behalf of the defendants, testified as follows, to wit:

My age is forty years. I reside in Gloversville, Fulton County; have resided in Gloversville about nine years. Next before coming to Gloversville to reside, I resided in the town of Dedham, State of Massachusetts; resided there perhaps ten years or more. Before that I resided in the city of Roxbury and in Charlestown, Massachusetts. I learned the trade of leather-dressing in the city of Charlestown and town of

Dedham. I learned my trade in the city of Charlestown in 1850 and 1851, and after that I completed it in Dedham. I served an apprenticeship of two years in Charlestown in learning it. After learning my trade I continued working at leather-dressing, I should think, about twelve years. While working at that business I mostly worked at bark-tanned leather, sheep, lamb, and calf. In the bark-tanned state they were used chiefly for lining of boots and shoes, binding of books, and covering rolls of cotton-spinning machines. Skins in the bark-tanned state are inclined to squeak, and are hard and squeaky.

Q. Have you at any time, in the business of leather-dressing, treated bark-tanned sheep and lamb skins in any manner for the purpose of endering them soft and pliable and to remove the squeak from them; and, if so, when, where, and with what, and how did you treat them?

(Objected to by plaintiff's counsel.)

A. I have for several years, in the town of Dedham, Mass., and in Gloversville, in this State. I treated them with fat liquor, with oil, soap, with salt, alum, and eggs; principally by dipping them.

Q. State as near as you can the years you treated bark-tanned sheep and lamb skins with fat liquor for the purpose of rendering then soft and pliable and for removing the squeak.

(Objected to by plaintiff's counsel.)

A. From 1851 to 1869 exclusively, not including those two years; at the town of Dedham, State of Massachusetts, and at the village of Gloversville, in this State; from 1851 to 1864, many thousand every year. I think in the year 1864 I done fifty dozens in Gloversville, and at different times subsequently I did small quantities of them. I refer to that treatment with fat liquor alone. I am acquainted with the business of manufacturing mittens and gloves of all kinds in this country. Bark-tanned sheep and lamb skins in the bark-tanned state are not suitable for mittens and gloves. The effect produced on bark-tanned sheep and lamb skins of the application of fat liquor to them makes them
130 soft and pliable and takes the squeak out of them. The application of fat liquor and manipulating them afterwards renders them suitable for mittens and gloves. By manipulating them afterward I mean staking and finishing. By finishing them I mean rubbing them on the grain with a cloth.

Q. State, if you know, whether or not the application of fat liquor to bark-tanned sheep and lamb skins has been used as a process to render such skins soft and pliable and to remove the squeak from them; and, if so, for what length of time, and by whom.

(Objected to by plaintiff's counsel.)

A. It has been used for more than eighteen years by myself, and at different times within the last ten years by other parties. One of the parties is George W. Gillett, of Gloversville; would not like to state other parties, as I did not see any others do it. On reflection, I did see one other party do it—that is John W. Place, of Gloversville; saw Mr. Place do it in March, 1871, and Mr. Gillett in 1867 or 1868, in Gloversville. Mr. Gillett and Mr. Place are manufacturers of mittens and gloves. I have no recollection of seeing any one else at Dedham, except myself, apply fat liquor in this process. That part of Dedham where I lived is now known as Norwood. I put the fat liquor in a tub, dipped the skins in it, and handled them till they had absorbed it sufficiently. Then the skins were placed on a table, stretched, afterwards nailed on frames and dried. This was at Dedham. I used fat liquor at Dedham, both warm and cold. At Gloversville I put my fat liquor in a

tub, handled the skins in it, then hung them up to dry, then staked and finished them. I think I used the fat liquor both warm and cold.

Q. State, if you can, in how many different years you treated bark-tanned sheep and lamb skins with fat liquor, as you have stated, at Dedham.

(Objected to by plaintiff's counsel.)

A. As near as I can remember, in all the years from 1851 to 1864 exclusive.

Q. State whether or not during these several years you treated the skins with fat liquor in the same manner; and, if different, how different.

(Objected to by plaintiff's counsel.)

A. I did not treat them all alike. In some cases I used oil with fat liquor. In some cases I dipped the skins in a dry state and sometimes in a wet state.

Q. State whether your treatment of the skins, when you used fat liquor alone, while at Dedham, during these several years, was the same in each instance; and, if different, how different.

A. It was not always the same. Sometimes I applied the fat liquor
131 when the skins were in a dry state and sometimes when they were in a wet state. That is all the difference.

Q. In what cases or instances did you determine whether to treat them in a dry state or in a wet state?

(Objected to by plaintiff's counsel.)

A. Before the skins were shaved I treated them in a dry state; after they were shaved I treated them in a wet state.

Q. State the reason why you treated them in a dry state when not shaved, and why in a wet state when shaved.

(Objected to by plaintiff's counsel.)

A. Because the shaved skin is wet when it is shaved, and the dry skin must be wet in some suitable preparation before it can be shaved.

Q. State whether or not the use of fat liquor upon bark-tanned sheep and lamb skins has been understood and adopted by you in the manner stated by you, as a process for rendering such skins soft and pliable and removing the squeak therefrom, for any number of years; and if so, for how many years.

(Objected to by plaintiff's counsel.)

A. It was understood and used by me quite extensively for about twelve years and occasionally for five years, for the purpose of making leather soft and pliable, and for removing the squeak therefrom.

Q. What kind of leather?

(Objected to by plaintiff's counsel.)

A. Bark-tanned sheep and lamb skins.

Q. State where you soused the fat liquor the twelve years, and where the five years mentioned by you.

(Objected to by plaintiff's counsel.)

A. During the twelve years at Dedham, Mass., and the five years at Gloversville, Fulton County.

Q. By Dedham, do you mean the place now called Norwood?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. State, if you know, whether the application of fat liquor to bark-tanned sheep and lamb skins has been a well-known and perfected process for softening such skins and making them pliable and removing the squeak from them; and if so, for how long a time have you known and understood such process?

(Objected to by plaintiff's counsel.)

A. I think the process has been well known for more than twenty years, and has been known by me for more than eighteen years, and fully understood by me during that time.

(Plaintiff's counsel here moves, 1st. To strike out the last answer as incompetent and improper. 2d. To strike out the first clause as to what witness thinks about the process having been known for twenty years, and on the same grounds.)

132 On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Is your memory good or otherwise?

A. It is fair.

Q. Were you sworn and examined as a witness for defendant in a suit in favor of this plaintiff against Albert Klein for an infringement of plaintiff's patent tried before Judge Hall, at Utica, in March, 1871?

A. I was.

Q. Did you then and there testify that prior to removing to Gloversville, you resided in Dedham, Mass., for from twelve to fifteen years?

A. I did.

Q. Is that the fact?

A. I think it is.

Q. Did you state on your direct examination in this case that prior to coming to Gloversville you resided in Dedham ten years?

A. I do not recollect.

Q. If you did so state, is that the fact?

A. I resided in Dedham more than ten years.

(Objected to by plaintiff's counsel as not responsive to the question, but the answer insisted on by defendants' counsel.)

Q. Answer specifically the question. If you did so state, is that the fact?

A. I decline giving a different answer from the one I have given.

Q. When answering a question put to you on the direct examination, calling for the length of time you resided in Dedham prior to going to Gloversville, did you know that you resided there more than ten years?

A. I answered the question from memory and not from knowledge.

(This answer is objected to by plaintiff's counsel as not responsive and not an answer to the question. The answer was insisted upon by defendants' counsel.)

Q. Please answer specifically and directly the last question put to you.

A. I must have known, but spoke from memory.

Q. Was your answer in accordance with your memory?

A. I think it was.

Q. In making the answer of ten years, did you first state a larger number of years and then change it to ten?

(Objected to by defendants' counsel.)

A. I do not recollect.

Q. Can you now swear to the number of years?

A. If you give me a little time to reflect I can give you the years and months.

(Defendants' counsel insist on taking last answer, and plaintiff's counsel objected as not responsive to the question put.)

Q. How much time do you want for reflection?

(Objected to by defendants' counsel.)

A. Perhaps a half an hour.

Q. Can you state accurately the number of years you resided in Roxbury before going to Dedham?

A. I do not know as I can state the time accurately.

Q. Can you state accurately the number of years you resided in Charlestown?

A. I can.

Q. Please state.

A.-Two and one-half years.

133 Q. With whom did you work in Charlestown, and in what capacity?

A. I worked for Reynolds & Wait, in the capacity of an apprentice.

Q. With whom did you work in Roxbury, and in what capacity?

A. I worked for George B. Monroe. I don't know in what capacity to call it; I was nothing but a boy at that time.

Q. With whom did you work in Dedham, and in what capacity?

A. I worked for several parties in the capacity of a journeyman.

Q. State the name of each, in chronological order, and the length of time with each.

A. 1st. Joseph Day, but can't fix the length of time I worked with him. 2d. E. W. Walker, a few months. 3d. Lyman Smith & Sons, and George Winslow & Sons, alternately for several years, but cannot remember the exact length of time for each.

Q. What length of time constituted a regular apprenticeship at your business?

A. There is no specified time; that is just as the parties interested can agree.

Q. What was the length of your apprenticeship?

A. Well, it is very difficult to tell you that. I served two years with Reynolds & Wait, and about two other years previously with my father.

Q. Where did you serve with your father?

A. In Roxbury and Dedham, in Massachusetts.

Q. What was your father's name?

A. George B. Monroe.

Q. Did you serve with him in Dedham prior to the time you served with him in Roxbury?

A. I did not.

Q. When, then?

A. Subsequently.

Q. Subsequently to what?

A. Subsequently to my working with him in Roxbury.

Q. When was it in reference to the time you served with the other parties mentioned?

A. It was previous.

Q. Then you served with your father at Dedham prior to your services in Charlestown?

A. I did.

Q. Where did you complete your apprenticeship, and with whom?

A. As near as I can remember, with Reynolds & Wait. I do not now remember of serving any further apprenticeship after leaving Reynolds & Wait.

Q. Where did you serve with Reynolds & Wait?

A. In the city of Charlestown, Massachusetts.

Q. Did you state in substance on your direct examination that you completed your apprenticeship in Dedham?

A. I do not recollect. If I did I spoke without giving the matter careful thought or careful reflection.

Q. How long did you serve with Reynolds & Wait?

A. About two years and one-half.

Q. Did you have two terms of service with your father as an apprentice?

A. I did.

Q. When, where, and how long was the first?

A. I don't remember the exact date when; was in the city of Roxbury something less than a year.

Q. Was this the time spoken of by you as being a mere boy, and before you went to Reynolds & Wait?

A. It was.

134 Q. When, where, and how long was the second?

A. I do not remember the exact date; was in Dedham rather more than a year.

Q. Was it before or after you worked for Day & Dedham?

A. Before I worked for Day in the capacity of a journeyman.

Q. Since your last answer, and during the recess, have you been in conversation with defendants or either of them, or any of their counsel, in relation to your evidence, or to any matter involved in this suit?

A. I have not conversed with Mr. Dodge, the defendant, but have conversed some with their counsel.

Q. How many times did you alternate between Lyman Smith & Sons and George Winslow & Sons?

A. I don't remember how many times; not a great many times, but a few weeks each time.

Q. Are all these parties mentioned by you with whom you served as apprentice and journeyman now dead?

A. As far as I know there are but two of them dead; that is, Samuel S. Reynolds and George B. Monroe are dead.

Q. In what business was your father engaged when you served with him as you mentioned?

A. When I served with him in Roxbury he was carrying on the business of dressing leather. When I served with him in Dedham he was dressing leather for Joseph Day.

Q. What kind of leather?

A. Bark-tanned sheep and lamb skins.

Q. In what business were Reynolds & Wait engaged?

A. In the business of dressing leather.

Q. What kind?

A. Morocco leather and sheep-skin leather.

Q. Bark-tanned or other?

A. Not bark-tanned.

Q. Oil-tanned?

A. No, sir.

Q. Kid-dressed?

A. No, sir.

Q. Did they do anything at bark-tanned?

A. Not that I recollect.

Q. At what kind of business was Joseph Day engaged when you worked with him?

A. In the business of dressing bark-tanned sheep and lamb skins.

Q. What E. W. Walker?

A. In the same business.

Q. What Lyman Smith & Sons?

A. Principally dressing bark-tanned sheep and lamb skins.

Q. What George Winslow & Sons?

A. Principally bark-tanned sheep and lamb skins.

Q. What kind of tanning were Reynolds & Wait engaged in?

A. Sumac-tanning.

Q. Is that similiar to bark-tanning, except that sumac is used instead of hemlock or other bark containing tannin?

A. Is very similar.

Q. Is the leather produced by the sumac-tanning in substantially the same condition as that produced by bark-tanning?

A. It is.

Q. Then the trade to which you was apprenticed and at which you served as apprentice was that of making bark-tanned leather?

A. It was that, both bark and sumac.

Q. Are any of those persons or firms still engaged in making bark or sumac tanned leather; and, if so, which or where?

135 A. Some of them are, viz: Mr. E. W. Walker, in the city of Providence, in the State of Rhode Island; two of the partners of the firm of Lyman Smith & Sons, and two of the partners of the late firm of George Winslow & Sons. The last two are so engaged at what was formerly called South Dedham, Massachusetts, now called Norwood.

Q. Under what name or style do the last two firms respectively carry on their business?

A. The firm-name of Lyman Smith & Sons remains unchanged. The remaining partners of the late firm of George Winslow & Sons are now doing business under the firm-name of Winslow Brothers.

Q. Have these firms since you left Dedham continued to, and do they now, manufacture bark-tanned leather in substantially the same manner and for the same purpose that they did when you worked there at the business?

(Objected to by defendants' counsel.)

A. I know little or nothing concerning their business since I left them.

Q. Have you not since you were in Gloversville had leather from both of those firms for sale in your trade of Gloversville?

A. I have, but do not know how they made it.

Q. Have you had it more or less every year?

A. I have.

Q. Was it bark-tanned leather in the bark-tanned state?

A. It was both bark-tanned and sumac-tanned. The leather was in the bark-tanned state and sumac-tanned state.

Q. Was the leather thus procured by you substantially like that made by them when you were with them?

A. It was about the same in appearance.

Q. For what purpose was the leather made by these firms when you were with them made and used?

A. For lining boots and shoes, binding books, and for covering top rolls of cotton-spinning machines.

Q. In what proportion for each of these purposes, as nearly as you are able to state?

A. It is very difficult to state. Lyman Smith & Sons—I should judge that half of their leather was made for cotton-spinning machines.

Q. Describe, if you know, the manner in which the leather was applied and is used on cotton-spinning machines.

A. The leather was made into cots, and then forced or strained into the top rolls, and is used on spinning cotton thread.

Q. What do you mean by top rolls? Please explain.

A. On every cotton-spinning machine there are two sets of rolls, between which the thread passes during the process of spinning. The lower set of rolls are of fluted iron or steel. The upper rolls are of wood, covered with bark-tanned sheep or lamb skins, applied to them in the manner I described in my former answer.

Q. About what are the dimensions of the upper roll?

A. I think they vary in length from two to four inches, and are about one inch in diameter.

Q. State, if you know, whether the cot is wet when stretched
136 on the roll.

A. I have never seen them stretched on in any other than the dry state.

Q. After the skins were bark-tanned, what was the first thing done with them to prepare them for market?

A. In preparing the roller leather for market the first thing was to shave them, next thing to soften them by the application of oil or fat liquor or any solution or preparation which the judgment of the workman might suggest, unless the softening process had been applied before shaving; that, I think, is all.

Q. Were the skins to be used for rollers always shaved after tanning?

A. I have never known them to be used without being made smooth on the flesh side by some process which was intended as a substitute for shaving.

Q. Is not shaving the taking off the rough parts from the flesh side of the skin, and reducing the thicker portions so as to make the skins of uniform thickness; and is not this done with a knife over a beam?

A. The skin is shaved for the purpose of making it smooth on the flesh side and of partially reducing the thickness of the stoutest portion, and is done with a knife over a beam.

Q. When the skin leaves the bark-tanning process, is it not on the flesh side usually or frequently in a rough state?

A. Yes, sir.

Q. And is not the shaving in part for the removing these rough parts?

A. It is.

Q. What, if anything, was done to the skin to prepare it for shaving?

A. It was dipped in a solution of alkali and oil or of dissolved soap.

Q. Was what in your direct you termed "fat liquor" ever used for this purpose?

A. I used fat liquor for that purpose.

Q. What other things, if any, were used for that purpose?

A. Oil and soap.

Q. Together or separately?

A. Both.

Q. Which in the larger number of instances?

A. In preparing skins for shaving I used soap separately in the larger number of instances.

Q. Did you alternate, sometimes using one and sometimes the other, to suit your judgment or convenience?

A. I did.

Q. Did you ever use oil alone for that purpose?

A. I may have done so in some instances.

Q. Can you state positively that you did?

A. I do not remember positively.

Q. Were the skins shaved that were to be used in book-binding?
A. They were.
Q. Were they prepared for shaving in the manner you have stated?
A. They were usually prepared for shaving by the use of soap alone.
Q. Did you ever use oil and alkali, or either, for the purpose?
A. In preparing book-binding leather for shaving I always intended to avoid the use of oil and alkali, except so far as alkali was contained in the soap I used.

137 (Answer objected to by plaintiff's counsel as not responsive to the question, but claimed to be received by defendants' counsel.)

Q. Please answer the last question directly and specifically.
A. Not that I now recollect.
Q. In making the preparation with alkali and oil, what kind of oil and what kind of alkali did you use?
A. Straits oil and soda-ash.
Q. What kind of oil is straits oil?
A. Straits oil is oil made of fish-livers.
Q. In what proportion did you use the oil and alkali?
A. There are no exact proportions to be named; I mixed them according to my own judgment.
Q. Is it necessary to have the skin in a soft state in order to shave it properly?
A. It is necessary to have them in a wet state, consequently they are soft.
Q. If a wet state is all that is requisite, why did you not use water alone?
A. I did not say that that was all that was necessary.
Q. Was it, then, or was it not necessary to have the skin in a soft state in order to shave it?
A. It was necessary to have it both soft and wet.
Q. Would water alone soften them sufficiently for shaving?
A. It would.
Q. Why then did you use soap?
A. For the same reason that any one uses soap in shaving their face—it makes the knife cut easier.
Q. After shaving what was the next step in the preparation of the leather for market?
A. In the preparation of book-binding leather the next step after shaving was to stretch the skin on a table, then nail them on wooden frames to dry. In the preparation of roller leather the next step after shaving was to apply to them the softening preparation, unless it had been applied before shaving. Then afterwards stretch them on a table and dry them on a frame. The next step is to dampen and polish them.
Q. How were they dampened and how polished?
A. They were dampened by rubbing on the grain a solution of gum-arabic and water, and polished by rubbing them with a piece of felt cloth and a piece of glass.
Q. Was the surface left smooth and hard when ready for market?
A. The surface was left smooth, but not hard.
Q. Was the surface soft when ready for market?
A. It was.
Q. How was the glass used upon the surface?
A. By rubbing the skin on the grain side with the glass.
Q. With the edge or surface of the glass?
A. With the edge.

Q. Was the skin when subjected to this process laid upon a hard wooden table?

A. It was laid upon marble, glass, or wooden table.

Q. Did the glass used have a wooden handle?

A. It did.

Q. Describe the glass, stating as nearly as you can its size, shape, thickness, and the character of its edge.

A. They are about seven inches in length, from two to three
138 inches in width, and about an eighth of an inch in thickness. The glass when in proper condition for use had the corners that were used little rounded.

Q. Please state the manner of its use by the operator.

A. The rounded edges of the glass are rubbed on the grain of the skin.

Q. Was this applied to the skin while they lay upon the table as mentioned?

A. It was.

Q. Did the operator ordinarily take the glass with the handle in both hands and shove and draw it back and forth upon the skin, bearing thereon with considerable weight?

A. Yes, he did.

Q. And about how long did this operation ordinarily occupy as to each skin?

A. Two or three minutes.

Q. State whether the operation of the glass upon the skin was a cutting or smoothing one.

A. A smoothing one.

Q. State whether or not the skin was rolled before or after this smoothing process.

A. It was not rolled at all.

Q. Was this smoothing process the last one to which the skin was subjected in your hands?

A. It was.

Q. State whether or not the skin was subjected to what you term a softening process after shaving, in cases where oil and alkali had been used as a preparation for shaving.

(Objected to by defendants' counsel.)

A. Yes, sir; that was a part of the polishing process.

Q. What part of the polishing process?

A. The softening part.

Q. Do you mean to be understood as testifying that in all cases where oil and alkali were used upon the skin before shaving, that they were applied again after shaving?

A. I do not.

Q. To what proportion of the skins dressed by you were alkali and oil applied after shaving?

A. Well, that I cannot tell.

Q. Please tell as well as you can.

A. I applied it the second time when in my judgment they required it; I cannot say the proportion.

(Plaintiff's counsel objects to the answer as not responsive to the question, especially the first clause of it; but was received at the request of defendants' counsel.)

Q. Please answer the last question, directly and specifically, as well as you are able.

A. It is impossible to answer; it is a foolish question, and it is impossible to answer.

Q. In the cases in which the skins were subjected to oil and alkali after shaving, was the liquor applied to them a second time while they were in a wet state as they came from a shaving process?

A. It was.

Q. Were more or less than half of the whole number dressed by you subjected the second time to oil and alkali?

A. I think less.

Q. What kind of oil and alkali were used in the second application?

A. Straits oil and soda-ash.

Q. In what proportions of each?

A. The proportions cannot be definitely stated.

139 Q. Did they vary at different times; and if so, to what extent?

A. They may have varied very little.

Q. Please answer the last question specifically and directly.

A. I have given all the answer I know how to give.

Q. Cannot you state whether the proportions did or did not vary at different times?

A. I can only state that if it varied at all the variation was not perceptible.

Q. What were the proportions of each?

A. There was no exact rule of proportion. I mixed them according to my own judgment.

Q. In mixing according to your own judgment, did you or did you not vary the proportions at different times?

A. Not if I know it.

Q. Did you weigh or measure either of the ingredients?

A. I did not.

Q. Did you have any different rule for mixing the ingredients for the application of the liquor after than before shaving?

A. I mixed them the same.

Q. Have you not stated in substance on your cross-examination that in mixing the oil and alkali for application before shaving you varied the proportion, from time to time, to suit your convenience and the circumstances?

(Objected to by defendants' counsel.)

A. I don't think I did as you have it there.

Q. The last question was whether you had not so stated in substance.

(Objected to by plaintiff's counsel.)

A. I don't understand that I have.

Q. Have you not stated in substance on this examination that you varied the proportions from time to time?

(Objected to by defendants' counsel.)

A. I don't think I have; I don't understand that I have.

Q. Were skins prepared at these places spoken of by you at Dedham for cotton-rolls in any different way from what you have now described?

A. They were.

Q. What other way, and by whom?

A. They were prepared by me by being softened with oil instead of alkali and oil.

Q. When that was used were the other processes like those you have described?

A. I don't understand the question, I have described so many processes.

Q. When oil was used instead of oil and alkali, did you subject the leather to the same processes described by you which followed the application of oil and alkali?

A. I did.
Q. What kind of oil did you use for this purpose?
A. Straits oil.
Q. By which method did you prepare the larger number of skins for cotton-rolls?
A. I softened them with oil.
Q. Were there any other methods of preparing these skins for cotton-rolls?
A. I cannot call to mind any now.
Q. Did you state on your examination, on the trial at Utica before referred to, that they were prepared in various ways—sometimes similar to the oil and alkali method described, and sometimes very different?
A. Not as I understand it.
140 Q. Is the oil and alkali you speak of used at Dedham what you term fat liquor?
A. It is, substantially.
Q. Did you use anything else there under the name of, or that you termed, fat liquor?
A. Not that I recollect.
Q. Was it at the time it was used there by you known as and denominated fat liquor?
A. It was not.
Q. On the trial at Utica, in answer to the question, "How many skins did you dress in that way per year at Dedham?" did you not state as follows, to wit: "That I have no means of ascertaining. I could not tell how many I dressed with fat liquor, because that is a thing I never approved of and never liked, and seldom used it;" or that in substance?
A. That is the way my answer is reported. I never thought my answer was correctly reported.
Q. How do you know it is so reported?
A. Because I have seen it.
Q. When did you see it?
A. I saw it several times.
Q. When last?
A. Last week some day.
Q. Where?
A. In my office.
Q. Who was with you?
A. My clerk, Mr. James H. Rose.
Q. Did you then look over all your evidence?
A. I did not.
Q. What portion of it?
A. I have no recollection what portion.
Q. Was it in the printed report of the evidence on that trial?
A. It was.
Q. Where did you get it?
A. I got it of Isaac V. Place.
Q. Will you swear positively that your answer referred to was not correctly reported?
A. I swear that I believe it was not.
Q. If not, in what respect?
A. I think the latter part of my answer was omitted.
Q. What do you think was omitted?
A. The words "except as a matter of convenience."
Q. Was your answer in other respects correctly reported?

A. I think it was.

Q. Does that answer as now corrected by you represent the fact truly?

A. I think it does. I wish to state further it is very difficult to remember with accuracy the number of skins I dressed in any particular way so many years ago.

Q. Did you prepare all the leather that was prepared for cotton-rollers by Lyman Smith & Sons and George Winslow & Sons while you were with them at Dedham?

A. I did not.

Q. How many others were engaged in the preparation of such leather?

A. I do not remember how many.

Q. State whether there were a considerable number of others.

A. I should think not.

Q. Do you know whether there was or not?

A. I do know.

Q. If you do know, please state.

A. My answer is, if the question is put in an intelligible shape I will answer it.

Q. Do you know whether or not there was a considerable number of persons besides yourself, engaged in the preparation of leather for cotton-rolls, in the employ of Lyman Smith & Son and George Winslow & Sons while you were with them in Dedham? and, if so, please
141 state.

A. I should think that Lyman Smith & Sons employed some two or three men in that special branch of business beside myself. I do not know how many were engaged by George Winslow & Sons in that special branch of business.

Q. Do you know the method used by the other workmen engaged in that special branch of business in preparing leather for cotton-rolls?

A. I don't remember now.

Q. Did the different workmen engaged on that special branch of business work together or separately?

A. They worked in different parts of the same establishment.

Q. Did they have free access to and communication with each other?

A. They did.

Q. Did you state in substance, on the trial at Utica, that most every workman had his own way of preparing them?

A. I think I did, very nearly that; think there is a word left out of the printed report.

Q. What word?

A. The word workman should be "experienced" workman.

Q. Would the answer thus corrected state the fact correctly?

A. I think it would.

Q. Did you state in substance, on that trial, there was no rule for the preparation of this leather, but that each workman had to use his own judgment in its preparation?

A. That is very nearly my answer. I think I answered that every "experienced" workman had to use his own judgment in its preparation.

Q. With the word "experienced" added, does the answer correctly state the fact?

A. I think it does.

Q. Did you use what you termed fat liquor at any other place than at Lyman Smith & Sons, before coming to Gloversville?

A. I do not recollect positively.

Q. Does your evidence as to the use of fat liquor in the preparation of

leather, before coming to Gloversville, refer to its use at Lyman Smith & Sons' and George Winslow & Sons', and in the manner you have stated?

A. It refers to the use of it at Lyman Smith & Sons', and in the manner stated; but I have no recollection of using it at George Winslow & Sons', but cannot positively say whether I did or not.

Q. Have you any personal knowledge of its use at Winslow's by anybody?

A. I do not recollect now.

Q. Have you any personal knowledge of the use of what you term fat liquor by anybody except yourself, or at any place other than Lyman Smith & Sons', prior to your coming to Gloversville?

A. I think I have.

Q. Where?

A. At Joseph Day's shop, in Dedham, by my father; and I also think I have seen him use it his own shop, in Roxbury, Massachusetts.

Q. What personal knowledge, if any, have you of its use at Joseph Day's shop?

A. I am quite confident I see my father use it at Day's shop.

Q. Can you swear positively that you did?

A. I don't know that I can.

142 Q. Can you state positively that you saw it used at your father's shop in Roxbury?

A. I cannot swear positively as to that, although I am positive that I saw him use it at one of those places, but cannot say which.

Q. When was it?

A. If it was in Roxbury; it must have been in 1845. If in Dedham, it must have been in 1848 or latter.

Q. How old were you when used in Roxbury, if used there?

A. Between thirteen and fourteen.

Q. Do you know how it was prepared if it was used at Roxbury or Dedham by your father?

A. It was prepared by the mixture of oil and alkali.

Q. How can you swear to that when you can't swear whether he used it in Roxbury or in Dedham?

A. Because any one can swear that they know how any particular article is made, without remembering the exact locality where it was made.

Q. Is that the only reason you can give for swearing positively it was prepared and used by your father at Roxbury or Dedham?

A. My reason for so swearing is because I believe my memory as to the fact is correct.

Q. Answer specifically and directly the last question.

A. That was not my only reason.

Q. What other reason had you?

A. Please read my previous answer, then you have an answer to this.

Q. Did you see your father prepare the fat liquor?

A. I don't remember distinctly whether I saw him or not.

Q. How do you know then of your own knowledge that the liquor you speak of was composed of alkali and oil?

A. I know that my father at that time gave me the information I now have, either by explaining or showing me the preparation of it, either at Roxbury or at Dedham.

Q. In which way did he give you the information by explaining it or showing you the preparation?

A. He did, at different times, give me the information, both by showing me and telling me, either at Roxbury or Dedham.

Q. If you cannot swear, as you state, that you saw this liquor prepared, if there was any such liquor prepared, how can you swear of your own personal knowledge that that particular liquor was composed of alkali and oil?

A. I have not sworn to any particular lot, not as I understand it.

Q. Is that the only answer you can give to the last question?

A. It is the only answer I wish to give.

Q. Did George Winslow and Son prepare leather for cotton-rolls while you were at Dedham?

A. Not that I remember.

Q. Do you know whether they were or were not engaged in the preparation of leather for cotton-rolls?

A. I don't remember whether they were or were not.

Q. Did Lyman Smith and Sons, or anybody, at Dedham or Roxbury, prepare bark-tanned leather for the manufacture of mittens and gloves?

A. Not to my knowledge.

Q. You have stated that while at Dedham you sometimes used
143 fat liquor warm, and sometimes cold. Did you do this indiscriminately, just as was convenient?

A. I did.

Q. Which in your judgment makes the best leather, warm or cold?

A. I think cold.

Q. Were the skins intended for book-binding prepared at Dedham in the bark-tanned state when ready for market?

A. They were.

Q. Was the leather for cotton-rolls required to be in a smooth, unbroken state when ready for use?

A. It was.

Q. Did you state on the trial at Utica that cotton-rolls required the leather to be a little elastic?

A. I did, I believe.

Q. Does that statement correctly represent the condition of leather required for cotton-rolls?

A. It does.

Q. Look at the skin shown you, marked "C. R." and state whether it is a bark-tanned sheep or lamb skin prepared for cotton-rolls.

A. It is a bark-tanned sheep-skin, but I cannot tell for what purpose it is prepared, as I have seen skins prepared exactly like it for other purposes than roller-leather, and the skin is so poor and so poorly prepared as to be, in my judgment, totally unfit for roller-leather.

Q. State whether the unruffled part of the skin shown you is or is not in substantially the same condition and substantially like the leather prepared for cotton-rolls by Lyman Smith & Sons?

A. Not like any prepared by me.

Q. In what particulars is it different?

A. In the first place, the leather is not suitably prepared for roller-leather, and the skin itself is too poor and shelly ever to be made into good roller-leather.

Q. State in what particulars the preparation of this skin differs from the skins prepared by you.

A. It is not so soft, and the original or natural quality of the skin is poor.

Q. What is the difficulty, if any, in the original quality of the skin?

A. The skin is what we call a shelly skin.

Q. What do you mean by shelly?

A. I mean hard.

Q. Is or is not the skin shown you a medium quality of a bark-tanned skin?

A. It is not.

Q. In selecting skins in the bark-tanned state for cotton-rolls by you while at Dedham, did you or did you not select a peculiar quality of skins?

A. I did.

Q. What quality?

A. A good grain and a naturally good skin.

Q. Did you select the best class of skins?

A. I did.

Q. When and where did you first treat bark-tanned skins with fat liquor after you went to Gloversville?

A. In 1864, in the shop of Samuel Dodge, the defendant in this suit.

Q. How many did you there treat in all?

A. About fifty dozen.

Q. Did you treat all these with fat liquor?

A. I did.

Q. How long were you at Dodge's at that time?

A. About a year.

Q. Is the number mentioned by you all you treated during the year by any process?

A. No, sir.

Q. How many in all did you treat?

A. I should think rather more than two hundred dozen; I can-
144 not remember the exact number.

Q. Were they treated to prepare them for mittens and gloves?

A. They were.

Q. In the preparation of these two hundred dozen, how many different processes did you use?

A. I think I used three.

Q. Did you state on the trial at Utica, that you tried different processes at Dodge's, perhaps a dozen different ones?

A. I think I did; I don't recollect, but think I did.

Q. Was that statement true?

A. I think it was.

Q. Please state the different processes used or tried by you there.

A. As most of them are secrets of the trade, I prefer not to describe them.

Q. We desire an answer to the last question. Please give it.

A. I decline.

Q. Have you been engaged in tanning, dressing, or softening skins as a business since you were in Gloversville?

A. I have.

Q. What portion of the time?

A. Most of the time during the first two years I resided there, and at intervals for two or more years after that.

Q. What portion of the time during the two years succeeding the first two?

A. It is impossible to state definitely, because I do not remember definitely.

Q. State as definitely as you do remember and are able now to state.

A. I should think more than half the time, perhaps most of the time.

Q. How long since you were so engaged as a business?

A. About four years.

Q. Do you mean to be understood that while at Dodge's the year

spoken of, you applied fat liquor to about fifty dozen of the two hundred dozen treated by you?

A. I do.

Q. Then the balance of the two hundred dozen were treated by some of the dozen other processes mentioned by you?

A. They were.

Q. Was the fat liquor applied warm or cold?

A. I cannot remember positively, but I think mostly cold.

Q. Did you on the trial at Utica say unhesitatingly and unqualifiedly that you applied it cold?

A. I do not remember.

Q. During this year and the use of the different processes referred to by you, did you and Mr. Samuel Dodge, sen., consult together on the subject of treating skins?

A. I think we did.

Q. Was one of the dozen processes used by you while there what is known as the egg process—that is, the use of the yolks of eggs with other ingredients, composing a liquor for application to the leather?

A. It was.

Q. Does this process have substantially the same effect upon the leather as Russell's process, so far as harshness, pliability, and squeak are concerned?

A. Substantially the same, except the egging process makes the leather a little better.

Q. Can you tell by looking at the leather after treatment by which process it has been treated?

A. Not unless I treated it myself.

Q. Is not the egg process considerably more expensive than Russell's mode of treatment?

A. It is.

145 Q. Where or how was the fat liquor used at Dodge's, mentioned by you, procured?

A. I think Mr. Dodge or his son procured it for me. I think it was procured at a skin-mill, but I am not able to state at which one.

Q. State, if you are able, what quantity of fat liquor you used about these fifty dozen.

A. I do not now remember.

Q. When and where was the next occasion on which you used fat liquor at Gloversville?

A. I think it was in 1865, at my shop in Gloversville.

Q. About how many at that time did you treat?

A. I do not remember definitely, but I think I done but a few skins.

Q. And was that done by way of experiment?

A. Was done for an illustration.

Q. Did you state on the trial at Utica it was done for experiment?

A. I might have so stated, but don't now remember it.

Q. Was the fat liquor used warm or cold on that occasion?

A. I do not positively remember.

Q. Did you state on the trial at Utica that it was cold mostly on this occasion?

A. I do not remember.

Q. When and where was the next occasion on which you used fat liquor in Gloversville?

A. I think it was in 1867 or 1868, in my shop in Gloversville.

Q. How many skins?

A. I think only a few.

Q. About how many? State as near as you can.

A. Only a few skins; might have been half a dozen, and might have been a dozen and a half.

Q. On the trial at Utica, did you state the number to be half a dozen?

A. I do not remember.

Q. When and where was the next occasion, if any, on which you used fat liquor at Gloversville?

A. I think in 1867 or 1868, in Mr. Geo. W. Gillett's shop, in Gloversville.

Q. Did you do that alone or in connection with Mr. Gillett?

A. In connection with Mr. Gillett.

Q. From the first occasion you speak of in 1864, at Dodge's shop, down to this occasion in Gillett's shop just spoken of, did you experiment in other ways than with fat liquor for softening bark-tanned skins?

A. I do not now remember that I did.

Q. Did you not on the trial at Utica swear that you did?

A. I do not remember.

Q. Will you now swear that you did not so testify on that trial?

A. I will not.

Q. If you did so swear, was it true or otherwise?

(Objected to by defendants' counsel.)

A. If I did so swear, I swore to what I believed to be true.

Q. Can you now swear that you did not so experiment during the period specified?

A. I cannot.

Q. How many skins did you treat at Gillett's shop at the time spoken of?

A. I think only a few dozen.

Q. How did you treat those?

A. I think by dipping them.

Q. Do you remember so as to be able to state positively?

A. I remember of showing Mr. Gillett how to prepare skins with
146 fat liquor, both by dipping or rubbing it on them with a cloth or sponge, but do not remember the exact occasion of showing him each particular process.

Q. Can you state whether on the occasion spoken of, at Gillett's shop, skins were or were not dipped in liquor?

A. I cannot distinctly recollect.

Q. How was the liquor used on that occasion prepared?

A. That I do not now remember.

Q. Was it applied warm or cold?

A. That I do not now remember.

Q. State, if you know, whether any, and, if so what, other ingredients were used with the fat liquor on this occasion.

A. That I do not now remember.

Q. Is this the occasion referred to by you on your direct examination when you speak of having seen Gillett use fat liquor at Gloversville?

A. I cannot remember if it be this or another occasion. If it was another occasion, it was about the same time and at the same place.

Q. How many skins did he then treat, and how did he treat them? State fully and particularly.

A. I do not remember how many skins he treated, neither can I remember all the particulars concerning his treatment of them.

Q. What particulars, if any, do you remember concerning his treatment of them on this occasion?

A. I do not remember any of the particulars on that occasion.

Q. When is the next occasion, if any, when you treated skins with fat liquor in Gloversville?

A. At my house, in 1868, I treated less than a dozen skins with warm fat liquor.

Q. Was this before or after the occasion spoken of at Gillett's shop?

A. I think it was after.

Q. Was it the last occasion of your use of fat liquor prior to the fall of 1869?

A. The last I remember.

Q. On the occasion spoken of, at Gillett's shop, were you instructing Mr. Gillett in the modes of softening bark-tanned leather and fitting it for gloves and mittens?

A. I was.

Q. Did you upon several occasions after your removal to Gloversville give him different processes for the purpose mentioned, and all the processes you knew of, for that purpose?

A. I think I did.

Q. State, if you can, the different processes you gave him.

A. I cannot remember them.

Q. State, if you know, how many different processes you did give him?

A. I do not remember.

Q. Have you now stated on your cross-examination all the instances you remember of the use of fat liquor by yourself and its use by others to your personal knowledge?

A. I have.

Q. When on your direct examination you state in substance that "the application of fat liquor to bark-tanned sheep and lamb skins has been a well-known and perfected process for softening such skins and making them pliable and removing the squeak from them for more than twenty years, and been understood by yourself for more than eighteen
147 years," do you refer to the use of fat liquor by the persons and in the manner you have now stated?

(Objected to by defendants' counsel.)

A. I do.

On his redirect examination by defendants' counsel the witness further testified as follows:

Q. State as far as you remember how the bark-tanned skins that were treated at Gillett's were treated.

(Objected to by plaintiff's counsel.)

A. Part of them were treated by the dipping process and part of them were treated by having the fat liquor rubbed on the grain by a cloth or sponge.

Q. If you remember any of the processes you gave Gillett for the treatment of bark-tanned sheep and lamb skins to prepare them for mittens and gloves, state such.

A. As near as I can now remember, I instructed him in the process of treating the skins with oil, with fat liquor, with fat liquor both warm and cold, and fat liquor and soap, with and without the addition of sal soda, and with the salt and alum and egging process.

Q. At the time you gave to Gillett these several processes, and instructed him as stated by you, did you understand them, and had you previously used these several processes on bark-tanned sheep and lamb skins?

(Objected to by plaintiff's counsel.)

A. I had used them and did understand them.

Q. In the use of fat liquor on bark-tanned sheep or lamb skins in Gloversville, did you in any instance make use of it as or by way of experiment?

(Objected to by plaintiff's counsel.)

A. Not as an experiment for myself, but as an experiment or illustration for others.

Q. Do you remember on how many different occasions, if more than one, you instructed Mr. Gillett as to the use of fat liquor on bark-tanned sheep and lamb skins?

A. Several times, but do not remember exactly how many.

Q. When on your cross-examination you stated in substance that you did not remember the particular manner the skins were treated by Gillett, please explain what you meant by that answer.

(Objected to by plaintiff's counsel.)

A. My explanation is, that I showed Mr. Gillett how to use fat liquor. I showed him how to use it by dipping the skins and also by applying it by cloth or sponge, but whether I showed him both processes at one time or at separate times I do not now remember.

Q. Are you able to state which one you showed him at any particular time, either the first or any subsequent time?

A. I am not able.

Q. You stated on your cross-examination that in preparing,
148 when in Massachusetts, what you term fat liquor, you were unable to state the exact proportions of the ingredients used. Please state how you made the liquor, and how you determined, in your judgment, when it was in a proper degree of richness or strength or in a proper state for use.

(Objected to by plaintiff's counsel.)

A. I made it by dissolving soda-ash in water, then turning oil into the mixture till by its looks and feeling there was the right proportion of oil in it.

Q. Please state particularly the difference in the leather and the qualities thereof, if any existed, between the leather produced by you, when in Massachusetts, for use on cotton-rollers, as stated by you, and the leather or skin shown you to-day marked "C. R.?"

A. The difference is that the leather I produced was softer and more pliable than the skin marked "C. R.," and when ruffled or broken up showed a degree of softness and flexibility which is not shown by the skin marked "C. R." Another difference is the quality of the skin marked "C. R." is inferior to those I used to dress.

Q. How about the squeak?

(Objected to by plaintiff's counsel.)

A. When I prepared roller-leather, when I had it ready for market it never squeaked, while the skin marked "C. R." does squeak.

Q. How as to their comparative fitness for mittens and gloves?

A. The skins prepared by me for roller-leather were before they were polished in the same condition as regards softness and pliability as skins treated by the fat-liquor process for mittens and gloves are before they are staked, and for mittens and gloves the skins prepared by me were far superior to the one marked "C. R."

Q. Are you acquainted with a glove made at Gloversville and vicinity from bark-tanned sheep and lamb skins treated with fat liquor, sometimes called "dog-skin gloves?"

(Objected to by plaintiff's counsel.)

A. I am.

Q. State whether or not the leather made by you in Massachusetts from bark-tanned sheep and lamb skins for cotton-rollers, as stated by you, was, before the same was polished, suitable for what are called dog-skin gloves.

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Please state why in some cases you used the fat liquor warm and in others cold.

(Objected to by plaintiff's counsel.)

A. I used it cold because sometimes it was more convenient to do so, not always having the means of warming it. I used it warm for
149 the same reason that a washer-woman uses warm soap-suds in washing clothes, because it works a little easier and is a little more pleasant to the hand.

Q. Do you remember having a conversation with Mr. Russell, the plaintiff, in regard to the use of fat liquor upon bark-tanned sheep and lamb skins; and, if so, when, where, and what was it?

(Objected to by plaintiff's counsel.)

Defendants' counsel stated that this question was inadvertently omitted on the direct examination.

A. I did in 1865, in Mr. Russell's shop at Gloversville. Mr. Russell showed me some bark-tanned skins that he had softened and was cutting into gloves. I remarked to him that I had softened a great many bark-tanned skins, and he asked me what I used to soften them with. I told him I used fat liquor. That is the substance of the conversation.

On his further cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Since your last answer, and during the recess, have you been in conversation with either of the defendants in relation to your evidence, or any matter involved in this suit?

A. I have.

Q. On the trial at Utica did you testify that you did not remember whether you told Gillett to use fat liquor warm or cold?

A. I do not remember whether I did or not.

Q. Do you know how your evidence is reported on that point?

A. I do not.

Q. Did you give Gillett the best process for softening bark-tanned skins and rendering them suitable for mittens and gloves, of which you had knowledge?

(Objected to by defendant's counsel.)

A. I think I did.

Q. How many processes in all did you give Gillett? State the number.

A. I don't remember the number.

Q. Please state all you do remember having given him.

A. I gave him the fat-liquor process, the oiling process, the soap and soda ash, the salt and alum, and egging processes.

Q. Did you give him these different processes as methods for softening bark-tanned sheep and lamb skins and rendering them suitable for mittens and gloves?

A. I did.

Q. Did you give him all these processes at once or on different occasions?

A. I think on different occasions.

Q. More than one at a time?
A. That I do not remember.
Q. State the first you gave him.
A. I have forgotten which.
Q. State the first you remember having given.
A. That I cannot do.
Q. Do you remember any one present at any time when you gave him a process?
A. On one occasion, I think, Mr. Combs, Mr. Gillett's partner, was present.
Q. On what occasion and where was this, and what process did you then give?
150 A. In Mr. Gillett's shop, upon one of the occasions when I instructed Mr. Gillett in the use of fat liquor.
Q. How long a period of time did the giving of these processes to Gillett cover?
A. I do not now remember.
Q. State your last knowledge and recollection as to the length of time it covered.
A. I cannot now recollect whether it was a few weeks or a few months.
Q. Where were the other occasions on which you gave him instructions beside the one mentioned when Combs was present?
A. In my own shop. The other places I do not positively remember where.
Q. Do you know there were other places beside your own shop?
A. I do not now remember.
Q. During the time you were giving him these various processes were you engaged in the sale of bark-tanned sheep and lamb skins at Gloversville?
A. I was.
Q. And were you selling or seeking to sell the same to Gillett?
A. I do not now remember.
Q. Do you mean to testify positively that you do not remember of selling or trying to sell such skins to Gillett?
A. I do.
Q. Did you testify in substance on the trial at Utica you were quite confident that Gillet purchased skins of you?
A. I do not remember.
Q. Have you no recollection at all whether he did or did not purchase skins of you?
A. Not at present.
Q. Did he have skins in his possession on which he experimented with your processes?
A. I think he did.
Q. Don't you know *weh*ther he did or not?
A. I do not remember.
Q. During the time covered by your giving him these various processes spoken of by you, was Mr. Gillet seeking, as you understood it, some method by which he could render bark-tanned sheep and lamb skins suitable for mittens and gloves, and were you endeavoring to help him to such method?
(Defendant's counsel objects to that part of the question as to what Gillett was seeking.)
A. Yes, as I understood it, and I was endeavoring to help him to such method.

Q. State where you had previously used the various processes you gave Gillett.

A. At Mr. Dodge's shop, and all but the salt, alum, and egging processes at Dedham, in Massachusetts.

Q. Then the salt, alum, and egging processes were a portion of the dozen used by you at Dodge's?

A. Yes, sir.

Q. For whom were you experimenting and illustrating at Dodge's while using the various processes spoken of by you?

A. I do not now remember.

Q. Were you then and there treating the skins for customers by the job or dozen?

A. I was.

Q. I again ask you to state in detail all the different processes used by you while at Dodge's.

A. That I decline to answer.

Q. In preparing skins for cotton-rolls at Dedham, in cases in
151 which you subjected the skins to fat liquor after shaving, were they put into such liquor while in a wet state as they came from the shaving-beam?

A. They generally were.

Q. When taken out of the liquor in a wet state what was next done with them?

A. They were stretched out on the table, sometimes after and sometimes before being hung up for the purpose of partially drying them, and then nailed upon frames and dried. The next step was to dampen them on the grain with a solution of gum arabic and water, then to rub them on the grain side with a felt cloth and glass, as before stated, and then they are ready for market.

Q. Were they ruffled or broken up after being stretched upon the frame to dry, as you before stated?

A. They were not.

Q. In the conversation with Russell referred to by you, in speaking of the *the* skins that he was to work upon, did you tell him that you had been softening skins like that?

A. I think I did.

Q. Did you tell him how you used fat liquor, or whether warm or cold?

A. I do not remember that I did.

Q. Did you state on the trial at Utica in substance that you did not say anything to him about that; that is, whether to use it cold or hot?

A. I not remember whether I did or not.

WILLIAM H. MONROE.

Subscribed and sworn this eleventh day of September, 1872, before me.

J. WENDELL,
Special Examiner.

HENRY E. KRAUSE, a witness produced, sworn, and examined by me and in behalf of the defendants as follows, to wit: I am aged forty-five years. Was born in Germany. Before I came to this country I learned the shoemaking and tanning trade; I served three years in learning the trade. I have been in this country since 1848; I resided in New York till 1850, and then went to Northville, in Fulton County, and worked for Le Fevre & Co., at shoemaking and tanning. I think I worked for them

about eighteen months. I went from there to Broadalbin, in Fulton County, and kept a shoe-shop for myself. I remained there from six to eight months; then worked for Joseph Fay, at Fay's Corners, Saratoga County, at shoemaking and tanning, for about ten months; then went from there to Gloversville in March, 1854, and have resided in Gloversville ever since. Since living in Gloversville I have followed the business
ness of cutting and manufacturing gloves and mittens. I am familiar with bark-tanned leather in the bark-tanned state, including bark-tanned sheep and lamb skins, and have been so familiar more or less since 1844.
152 I am acquainted with an article used by manufacturers of mittens and gloves called "fat liquor." I know Isaac V. Place and John W. Place, of Gloversville. They are mitten and glove manufacturers at Gloversville, and have been ever since I came into the place in 1854; at least Isaac V. Place has. In their business they dress the skins used by them. I was in the employ of Isaac V. Place in 1856 and 1857, two whole years, and since that more or less for five or six years. I do not know of Isaac V. Place preparing bark-tanned sheep and lamb skins for gloves, I know of two occasions. The first one was in 1857; I could not tell how many; might be from fifty to one hundred dozen skins; I think they dressed fifty dozen. I helped Mr. Place treat them. Mr. Place went to his own mill, the swamp mill, and got some fat liquor from time to time, and brought it into his cutting-shop or manufacturing-shop. And we had the bark-tanned sheep and lamb skins thrown into the fat liquor, or dipped in, whichever you mind to call it. Some of the fat liquor we heated in an iron pot or kettle, for the purpose to strike to through the leather quick. We left them in over night, after stirring them with a stick and some with our hands, then we hung them out to dry. After that they were finished for the cutting-block, that is, they were staked for cutting into gloves. Then he had them cut up and made into gloves. This was done in Gloversville, in Mr. Place's own shop. I have not helped Mr. Place to treat bark-tanned sheep and lamb skins the second time for gloves. The second time Place treated bark-tanned sheep and lamb skins for mittens and gloves that I know of was in 1862. He had a lot of bark-tanned dipped in fat liquor, and then made up into Montpelier gloves and gauntlets, I could not tell how many. He had some four or five hundred dozen of gloves and mittens cut out of this lot of skins, and had some skins left. I did not see how Mr. Place treated these skins, as I worked in another part of the shop; I did not cut up these skins myself; I did not see them cut up, but saw them after they were made up. I did not lay them off. I saw the skins before they were treated, and saw them afterwards before they were taken to the cutters. I examined them then.

Q. In your judgment, how and with what had these skins been treated?

(Objected to by plaintiff's counsel.)

A. According to my judgment they must have been fat-liquored. The skins were soft and pliable and fit for gloves, that is, when I saw them
before they were taken to the cutters. The first lot after they
153 were fat-liquored were soft and pliable, and were fit for Montpelier button-tops, and gloves and gauntlets. Both lots of skins before being fat-liquored were harsh and squeaky, and were not fit for gloves. In treating the lot I helped treat, we heated some fat liquor and put it in a tub; was made milk-warm when the skins were put in.

Q. State particularly how the liquor was prepared for and applied to the lot you helped Mr. Place treat.

A. The liquor was prepared when it come from the mill; after we had

it in the cutting-shop we took some of the liquor, put it in a kettle on the stove and warmed it, then throwed it into a tub, and in cases where the liquor was too warm after we had it in the tub we added cold fat liquor to it; when we thought the liquor was not too warm we drawed the skins in. After a certain time, or when we thought the skins were soaked through, we took them out and hung them on the fences to dry. Then they were staked with an arm-stake, and were then ready for gloves.

Q. State, if you know, how warm the liquor was when applied to the skins.

(Objected to by plaintiff's counsel.)

A. Was milk-warm; might have been warmer. I don't know how many degrees. One dozen of these skins would make two dozen pairs of gloves.

Q. Are you acquainted with a glove made in Gloversville and vicinity from bark-tanned sheep and lamb skins, treated with fat liquor, called "dog-skin gloves?"

A. Yes, sir.

Q. State whether the lots of skins spoken of by you, and manufactured into gloves by Mr. Place, were, after their treatment as you have described, suitable for dog-skin gloves.

(Objected to by plaintiff's counsel.)

A. They were; some of them were. The skins had to be sorted, the sheep-skins from the lamb-skins. The lamb-skins were suitable, but the sheep-skins were not. Sheep-skins were cut into men's gauntlets—the heavier skins.

Q. Are you acquainted with the class of skins prepared by Russell, the plaintiff, by what is called his process or patent, and made into what are called dog-skin gloves?

A. I am.

Q. How did the bark-tanned sheep and lamb skins, dressed with fat liquor by Mr. Place when you helped him, compare in quality and fitness for what are called dog-skin gloves with those prepared by the plaintiff according to his process?

(Objected to by plaintiff's counsel.)

A. Mr. Place's skins were a little heavier than Mr. Russell's. Mr. Russell's skins were shaved down more than Mr. Place's, that is, curried down more on the curry-beam. That made Place's gloves a little heavier.

I have seen Mr. Russell's men's gauntlets. They were the same
154 in quality, according to my judgment, as those made out of Mr. Place's skins, that were prepared in fat liquor. In quality they were alike.

Q. What was the effect of fat liquor applied to bark-tanned sheep and lamb skins in the cases mentioned by you at Mr. Place's upon the squeak in the skins?

A. It took the squeak out, and made the skins soft and pliable.

Q. State, if you know, whether or not Mr. Place has used in his business at Gloversville, for the manufacture of gloves, bark-tanned sheep and lamb skins, prepared by the use of fat liquor other than the two lots spoken of by you.

A. He has.

Q. When? State the years as near as you can.

A. From 1857, for five or six years right along, I know he used up bark tanned skins prepared in fat liquor, that is, worked up into mittens and gloves.

Q. State, if you know, whether or not Mr. Place during these years

mentioned in your last answer worked up these skins into mittens and gloves extensively or otherwise.

(Objected to by plaintiff's counsel.)

A. Not very extensively.

Q. State how many per year, as near as you can.

A. I am not able to state how many.

Q. If you know of the manufacture of bark-tanned sheep and lamb skins treated with fat liquor into mittens and gloves in Gloversville other than those made by Mr. Place, state the time you first knew of their being made and by whom made.

(Objected to by plaintiff's counsel.)

A. I think Mr. Russell, the plaintiff, showed me some gloves when he occupied Jones' shop for a shoe-shop. If I recollect right, it was in 1860. The gloves Mr. Russell showed me were made of bark-tanned sheep. According to my judgment, they must have been prepared in fat liquor. He bragged of the gloves, how soft they were, and made out of such common material as bark-tanned sheep, and I think he told me he dipped them or softened them in fat liquor. Mr. Edward Dunson I know. He has cut up leather of that description. I have seen skins of that description hang out to be dried on Mr. Russell's fence when he lived in Fulton street, near the Fulton County Bank, in Gloversville. In passing there I took skins from the fence with my hands and tried them to see if they were soft and pliable. I have seen bark-tanned sheep-skins in Mr. Dodge's shop; some of them laid in piles, some in a tub in what I judged to be fat liquor. I saw that at various times in Mr. Dodge's shop; the same times see some hang out on the lines to dry.

Q. At what place did Mr. Russell show you these gloves and tell you how he prepared the skins?

A. In his own shoe-shop, what we call Jones' shop, in Gloversville.

155 Q. How many gloves did he show you at that time?

A. He showed me one dozen. He had some laying on a shelf; I did not take much notice how many.

Q. When was it you saw these skins hung out on Mr. Russell's fence?

A. I think it was in 1859.

Q. How, in your judgment, were those hanging on the fence treated?

(Objected to by plaintiff's counsel.)

A. According to my judgment, they had been treated in fat liquor.

Q. When was it you saw the skins referred to at Dunson's?

A. It might have been in 1863 or 1864; I am not able to state positively. He occupied a shop near my premises. The shop occupied by Dunson was on Main street in Gloversville, known at one time as A. B. Giles' barn, a room done off for a shop. Mr. Dunson has since died; cannot state the time he died; think five or six years ago.

Q. When was it you saw the skins referred to by you at Dodge's shop?

A. First in 1855, and then right along every year, more or less.

Q. How did the leather in the gloves Russell showed you, and the skins you saw on Russell's fence, and those you saw at Dunson's and at Dodge's shop, compare in quality and condition as to being soft and pliable and free from squeak, with those prepared by the plaintiff according to his process?

A. I should judge all alike.

Q. How did they compare as to suitableness for what are called "dog-skin" gloves?

A. They were soft and pliable and might have been cut into such gloves, and suitable for such gloves.

Q. State, if you know, whether bark-tanned sheep and lamb skins prepared with fat liquor for the manufacture of mittens and gloves other than what you have stated, has been used in Gloversville and vicinity for any length of time, and, if so, for how long?

(Objected to by plaintiff's counsel.)

A. It has been used ever since I worked at the business in 1854.

Q. State whether bark-tanned sheep and lamb skins, made soft and pliable for the manufacture of gloves, have been in market in Gloversville and in use for the manufacture of gloves, and, if so, how long?

(Objected to by plaintiff's counsel.)

A. They have been, more or less, ever since I lived there.

On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Were you sworn and examined as a witness for the defendant in a suit by this plaintiff, for an infringement of his patent, against Albert Klein, tried at Utica before Judge Hall in March, 1871?

A. I was; was only one witness sworn by the name of Krause, on that trial, and my name was incorrectly reported as "Harmon" instead
156 as "Harry" E. Krause.

Q. Since that trial, have you seen or heard read any report of your evidence?

A. I have read a part of it myself; only a few lines of it; have not heard it read.

Q. When was it?

A. Last Wednesday, the day of my direct examination.

Q. Was it before your examination?

A. It was before.

Q. By whom was it shown you?

A. By nobody; I asked for it myself.

Q. Of whom did you ask it, and by whom was it shown you?

A. Of Isaac V. Place.

Q. Was the trade that you learned before coming to this country that of bark-tanning and shoemaking?

A. Principally shoemaking, but done some at tanning, and understood the nature of bark-tanning liquor.

Q. Did you ever serve an apprenticeship at the business of bark-tanning, or any other kind of tanning?

A. Not wholly at the tanning business.

Q. You mean, then, that before coming to this country you served an apprenticeship at shoemaking, and worked principally at shoemaking, but did something in the mean time at bark-tanning?

A. Yes, sir.

Q. What time in 1856 did you commence work for Mr. Place?

A. I commenced work for Mr. Place the first of December, 1855, and continued till some time in the fall of 1857; about two years.

Q. Where did you then go?

A. I then went a manufacturing for myself for a few months.

Q. And what next?

A. I think for about seven or eight months in 1858 I worked for Ward and McNab, cutting mittens and gloves.

Q. Where next?

A. I then worked for Mr. Place and cut up some skins for him, but how long I could not say.

mentioned in your last answer worked up these skins into mittens and gloves extensively or otherwise.

(Objected to by plaintiff's counsel.)

A. Not very extensively.

Q. State how many per year, as near as you can.

A. I am not able to state how many.

Q. If you know of the manufacture of bark-tanned sheep and lamb skins treated with fat liquor into mittens and gloves in Gloversville other than those made by Mr. Place, state the time you first knew of their being made and by whom made.

(Objected to by plaintiff's counsel.)

A. I think Mr. Russell, the plaintiff, showed me some gloves when he occupied Jones' shop for a shoe-shop. If I recollect right, it was in 1860. The gloves Mr. Russell showed me were made of bark-tanned sheep. According to my judgment, they must have been prepared in fat liquor. He bragged of the gloves, how soft they were, and made out of such common material as bark-tanned sheep, and I think he told me he dipped them or softened them in fat liquor. Mr. Edward Dunson I know. He has cut up leather of that description. I have seen skins of that description hang out to be dried on Mr. Russell's fence when he lived in Fulton street, near the Fulton County Bank, in Gloversville. In passing there I took skins from the fence with my hands and tried them to see if they were soft and pliable. I have seen bark-tanned sheep-skins in Mr. Dodge's shop; some of them laid in piles, some in a tub in what I judged to be fat liquor. I saw that at various times in Mr. Dodge's shop; the same times see some hang out on the lines to dry.

Q. At what place did Mr. Russell show you these gloves and tell you how he prepared the skins?

A. In his own shoe-shop, what we call Jones' shop, in Gloversville.

155 Q. How many gloves did he show you at that time?

A. He showed me one dozen. He had some laying on a shelf; I did not take much notice how many.

Q. When was it you saw these skins hung out on Mr. Russell's fence?

A. I think it was in 1859.

Q. How, in your judgment, were those hanging on the fence treated?

(Objected to by plaintiff's counsel.)

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Q. State, if you know, whether bark-tanned sheep and lamb skins prepared with fat liquor for the manufacture of mittens and gloves other than what you have stated, has been used in Gloversville and vicinity for any length of time, and, if so, for how long?

(Objected to by plaintiff's counsel.)

A. It has been used ever since I worked at the business in 1854.

Q. State whether bark-tanned sheep and lamb skins, made soft and pliable for the manufacture of gloves, have been in market in Gloversville and in use for the manufacture of gloves, and, if so, how long?

(Objected to by plaintiff's counsel.)

A. They have been, more or less, ever since I lived there.

On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Were you sworn and examined as a witness for the defendant in a suit by this plaintiff, for an infringement of his patent, against Albert Klein, tried at Utica before Judge Hall in March, 1871?

A. I was; was only one witness sworn by the name of Krause, on that trial, and my name was incorrectly reported as "Harmon" instead
156 as "Harry" E. Krause.

Q. Since that trial, have you seen or heard read any report of your evidence?

A. I have read a part of it myself; only a few lines of it; have not heard it read.

Q. When was it?

A. Last Wednesday, the day of my direct examination.

Q. Was it before your examination?

A. It was before.

Q. By whom was it shown you?

A. By nobody; I asked for it myself.

Q. Of whom did you ask it, and by whom was it shown you?

A. Of Isaac V. Place.

Q. Was the trade that you learned before coming to this country that of bark-tanning and shoemaking?

A. Principally shoemaking, but done some at tanning, and understood the nature of bark-tanning liquor.

Q. Did you ever serve an apprenticeship at the business of bark-tanning, or any other kind of tanning?

A. Not wholly at the tanning business.

Q. You mean, then, that before coming to this country you served an apprenticeship at shoemaking, and worked principally at shoemaking, but did something in the mean time at bark-tanning?

A. Yes, sir.

Q. What time in 1856 did you commence work for Mr. Place?

A. I commenced work for Mr. Place the first of December, 1855, and continued till some time in the fall of 1857; about two years.

Q. Where did you then go?

A. I then went a manufacturing for myself for a few months.

Q. And what next?

A. I think for about seven or eight months in 1858 I worked for Ward and McNab, cutting mittens and gloves.

Q. Where next?

A. I then worked for Mr. Place and cut up some skins for him, but how long I could not say.

Q. State the time you then remained with Place as nearly as you are able.

A. Perhaps three or four months; I think it was the latter part of 1858.

Q. And where next did you go and what did you do?

A. I think I went to Daniel S. Tarr's; done cutting; can't state how long I remained there. That year, which I think was 1859, worked at three different places: Tarr's, Leonard's, and C. R. Goodrich's. The same fall, the latter part of 1859, and during the winter of 1860, I worked for Isaac V. Place.

Q. Where next did you go and what did you do?

A. I manufactured some for myself, in Austin Porter's shop; I can't state how long; was some months; was less than a year. Next I worked for Place again; was, I think, in 1860, but cannot tell how long. I think I next made goods, or manufactured for myself again, at Mr. Porter's shop; I cannot state the length of time I was so engaged, but was the latter part of 1860 and the fore part of 1861.

Q. When was the next time you worked for Place, and how long did you then work?

A. Was in 1861, but cannot state the length of time I worked.

157 Q. When did you next work for Mr. Place, and how long at that time?

A. I think the same year I cut up some skins for Place, in Porter's shop, that I hired of him, but am not positive.

Q. State the next time, of which you are positive, that you worked for Place, and the length of time.

A. In the fall of 1862, I think I worked three or four months; the fourth month was part of January, 1863. I think that is all I ever worked for Mr. Place.

Q. For what other persons or firms had you worked at the business of manufacturing mittens and gloves since you left Place in the fall of 1857, and prior to 1870, besides those you have already mentioned?

A. H. N. Lowenstein, Mende Bros., and Alanson Judson; that is all. The balance of the time I worked for myself in the same business, except while at Place's.

Q. Were these various persons and firms manufacturing in Gloversville at the time you worked for them?

A. All, except Mr. Lowenstein.

Q. Please state whether these persons and firms severally did a large or small business at manufacturing.

A. All of them done a large business except Lowenstein and the Mendes.

Q. Did you personally assist in treating bark-tanned skins, you mentioned in your direct, as done by Place, on more than one occasion?

A. Only on one occasion.

Q. What year, and what part of the year was that? State particularly.

A. I think the latter part of the year 1856 and the fore part of 1857. I am not positive we done any in 1856, but am positive as to the winter and spring of 1857.

Q. State, as nearly as you are able, the number of skins done on this occasion.

A. There might have been form forty to seventy dozen skins; I am not able to state the number.

Q. How many employees had Mr. Place then in his manufacturing business?

A. I am not able to state. He had them all over his mill, his beam-shop, and manufacturing shop, besides a number who done job-work from time to time.

Q. Did anybody work with you in treating these skins as you have stated; and, if so, how many, and who?

A. Only one, Henry Voorhees. The stakers have assisted in hanging them out to dry and fetching them in, and staking them for the block.

Q. Was the treatment done secretly?

A. No, sir.

Q. Please state the names of the stakers just referred to by you.

A. I could not tell; can't state the names. He let his staking out by the job to different ones. The staking was done in his barn, on the same premises.

Q. Then this lot now spoken of were the only skins treated in that way by Place during the first two years that you worked for him?

A. Yes, sir.

Q. Did Mr. Place tell you how to treat them, or did you do them according to your own judgment?

158 A. He brought fat liquor, and told us to fat-liquor the skins.

Q. Is that all the directions he gave you?

A. That is all I know of.

Q. Did you treat some of that lot with the fat liquor warm, and some cold?

A. That I don't recollect; we might.

Q. Did you testify in substance, on the trial at Utica, that you did apply the fat liquor cold and warm on that occasion?

A. I think I did.

Q. Did you at first put the skins into the fat liquor while it is in a cold state, too cold to work it in with your hands with comfort, and then add warm water or warm fat liquor to make it comfortable for working?

A. I think we put skins in cold fat liquor the first time and hung them out to dry; some days after he brought more fat liquor, and of that we warmed some for the purpose to strike through the skins quicker and make it more comfortable to work.

Q. Was it too cold to work in with comfort without heating?

A. It was when we stirred them up with our hands, and worked in them by handling the skins in the tub.

Q. Did you apply the fat liquor to any of this lot with a sponge on the surface of the skin?

A. I did.

Q. On the trial at Utica, when speaking of the manner in which you used the fat liquor at Place's, did you testify in substance that you used it just as it came from the mill, by warming up some of it, and that some you put on cold, some with the sponge, and some of the skins you put in the liquor and soaked cold?

A. I don't recollect.

Q. If you so stated, did such statement represent the fact correctly? (Objected to by defendant's counsel.)

A. Any statement I made, I meant should be the truth.

(This last answer was objected to by plaintiff's counsel as not responsive, and not an answer to the question, but is entered by request of defendant's counsel.)

Q. Did you in fact warm up some of the fat liquor used by you at Place's?

A. I did.

Q. Did you put some of it while cold on the skins?
A. I did.
Q. Did you put on some of it with a sponge?
A. I did.
Q. Did you put some of the skins in the liquor and soak cold?
A. Yes; I did.
Q. On the trial at Utica, when asked in substance in which way you did the most, whether with the liquor warm or cold, did you answer that you could not tell; it depended some on the weather; that if you wanted them soaked through quicker, you put them in the warm liquor, because warm liquor strikes through quicker than cold; that it depended on the time you wanted to spend?
A. If my testimony reads so, I think likely I answered so. I do not recollect word for word.
Q. Do you recollect of so answering in substance?
A. I think likely I did.

Q. Were these skins hung out to dry in a public place?
159 A. They were hung out in Mr. Place's yard, and front fence, along the street, and I think on neighbors' fences.

Q. You have mentioned four occasions on which you worked for Place after the first two years, and prior to the fall of 1862; did you on any of these occasions treat skins for Mr. Place with fat liquor or see any so treated on his premises, or see any leather in his possession that you thought had been so treated?
A. I did not so treat any nor see any so treated on his premises, but I think I see some gloves during every year, in the four years, in his packing-room, which I thought had been soaked or treated with fat liquor.
Q. Can you mention any lot of gloves, of which you can speak distinctly and particularly, that you saw on his premises during that period which you thought had been treated with fat liquor?
A. Not in particular.
Q. Did you state in substance, on your direct examination, that Mr. Place had prepared bark-tanned sheep and lamb skins for gloves with fat liquor on two occasions, and did you mention the lot treated during the first two years as the first occasion, and 1862 as the second occasion?
A. I did, of the skins; I called it two lots of skins; I understood it so.
Q. On the several occasions when you worked for Mr. Place, did he manufacture mittens and gloves from sheep or lamb skins in the bark-tanned state?
A. Yes, sir.
Q. Before cutting up the skins treated by you for Mr. Place in 1856 and 1857, did you sort them, throwing out a portion for mittens; and, if so, about how many?
A. We did sort them, but the number I cannot state.
Q. State the number or proportion of the whole thus thrown out, as near as you are able.
A. Can't recollect.
Q. Into what kind of mittens were those thus thrown out made?
A. I could not state exactly, but I think three different kinds—men's mittens with gauntlet-wrists on, and the small pieces into boys' mittens.
Q. Were these a coarse and cheap class of mittens?
A. I could not tell.

Q. If I understand you correctly, you did not treat or assist in the treatment of the second lot of skins in 1862?

A. You understood me correctly; I did not.

Q. Did you see them treated?

A. I did not.

Q. Then you have no personal knowledge of the manner in which they were treated except what you judged from their appearance?

A. Only what I judged from the appearance of the gloves after they were made up.

Q. Are you aware that there have been various methods in use in Gloversville and vicinity for softening bark-tanned skins?

A. I am.

Q. Do you profess to be able on looking at a glove made from bark-tanned skin, softened, to determine with certainty by what method or process it had been treated?

160 A. I profess no such thing; no man can tell, because the same can be done with oil, soap, and warm water.

Q. Have there been other processes in use for the same purpose besides oil, soap, and warm water?

A. There have.

Q. Can you determine on looking at a glove whether the leather had been treated with fat liquor, or oil, soap, and warm water, or some other process?

A. I cannot.

Q. Have you since leaving Place in the fall of 1857 worked at softening bark-tanned sheep and lamb skins?

A. I have.

Q. When, where, and for whom?

A. Two years ago, for Mr. A. Judson, at his manufacturing shop in Gloversville, and that is all. I mean by A. Judson, Alonson Judson.

Q. Did you then use fat liquor, or some other material or process?

A. Fat liquor and other processes.

Q. Which the most?

A. Other processes.

Q. State about what number of skins, in all, you treated for him, or aided in treating?

A. I could not tell; worked three or four weeks on them.

Q. What proportion of the whole did you treat with fat liquor? State as near as you are able.

A. I cannot state; used up one barrel of fat liquor.

Q. Was there a larger portion treated by other processes than those treated with fat liquor?

A. Yes, sir.

Q. Considerably larger?

A. Yes.

Q. Was Mr. Austin Porter in that establishment at the time as a partner, or otherwise?

A. He was present as foreman, not as partner.

Q. On the trial at Utica, when asked, in substance, how soft the skins treated by you at Place's were made by such treatment, did you answer, "soft enough that we thought they would do for glove manufacturing, so that they would not break out the stitches?"

A. I presume I did.

Q. Does that answer correctly characterize the condition of the skins there treated by you, in regard to softness?

(Objected to by defendants' counsel.)

A. It does not wholly.

Q. Why, then, did you make such answer?

(Objected to by defendants' counsel.)

A. I have no reason to give.

Q. Do you know whether or not there is an article of gloves manufactured at Gloversville, called "dog-skin gloves," not made from bark-tanned skins?

A. There was some years ago, made from imported skins; have not seen any lately.

Q. How long since you saw any of the leather, or gloves made from the leather, treated by you at Place's?

A. Not since I left him in 1857.

Q. In comparing the quality of that leather with what Mr. Russell produces, you judge from your recollection of that leather, do you not?

A. Yes, sir, I do.

Q. You mention the gloves shown you by Mr. Russell as the first of that kind of leather you saw in Gloversville except those you
161 saw at Place's, do you?

A. I don't think that I ever mentioned any such thing, that those I saw at Russell's were the first I ever saw of that kind of leather.

Q. Did you, on your direct examination, speak of the gloves shown you by Russell, when he occupied Jones' shop as a shoe-shop, as the first of that kind of leather (that is, bark-tanned sheep and lamb skins treated with fat liquor) you saw in Gloversville, other than those made by Mr. Place?

A. I don't know as I mentioned it as "the first" of that kind. I have no recollection that I said "first;" I may have said so.

Q. Was that shown you by Russell, at the time mentioned, the first of the kind you recollect to have seen in Gloversville, other than at Place's?

A. I don't remember whether I saw it first at Mr. Russell's or at Dunson's, or on Mr. Russell's fence.

Q. You think it was in 1860 that Russell showed you the gloves spoken of here?

A. I won't be positive as to the day or the year; I know it was before the war.

Q. Do you think it was in 1860?

A. I do.

Q. Did you see the skins on Russell's fence, that you mentioned in your direct examination, before or after he showed you the gloves?

A. I think it was before.

Q. Are you positive?

A. No, sir.

Q. In what year do you think it was?

A. I think it was in 1858 or 1859.

Q. Which do you think it was?

A. I think in 1859.

Q. In what year did you see those at Dunson's?

A. I stated, on my direct examination, it was in 1863 or 1864. Still, it was before that.

Q. When was it?

A. I can't state the time exactly, but think it was in 1859 or 1860.

Q. What has led you to change the time from that stated on your direct?

A. I thought of it, and think Mr. Dunson was then in the war, and this was before the war when I see the bark-tanned leather and gloves in the shop he occupied.

Q. What time of the year was it?
A. I think in the spring of the year.
Q. What time of the year was it when you saw the skins on Russell's fence?
A. In the spring.
Q. Was it the same spring you saw the leather and gloves at Dunson's?
A. That I could not tell.
Q. Which was the first in the order of time?
A. I could not tell.
Q. Where was Dunson's shop at the time you saw them there?
A. What is known now, or has been known, as Giles' barn; stands back of Main street. The lot is on Main street, but the barn stands on the rear end of the lot.
Q. Where was your residence at the time?
A. In Gloversville, on Main street, in Mr. Elias Ward's house.
Q. Is that where you now reside?
A. No, sir.
Q. State when you first saw these skins at Dodge's, spoken of in your direct examination.
162 A. I think I first saw them there in 1855.
Q. Where was the first lot you saw there?
A. In his working-room.
Q. Where were they situated in the room?
A. They laid on the floor in piles.
Q. Were they wet or dry?
A. Some of them dry, some in a commercial state, as we buy them, and some laid about as they come from the outside, dry.
Q. How many in the whole?
A. I could not state.
Q. State as near as you can.
A. I can't state any number.
Q. What number or proportion were in the commercial state; what wet and what dry? State as to each.
A. The larger number, I think, were in the commercial state; can't tell as to the wet or dry.
Q. Did you see any of these treated?
A. No, sir.
Q. When was the next time you saw such skins or leather at Dodge's?
A. In 1856.
Q. Where were these?
A. On the same premises; in the same room.
Q. How were those situated?
A. They laid about in his shop.
Q. How many were there of that lot?
A. I am unable to state.
Q. Were these in the commercial, wet, or dry state?
A. Some were in a commercial, some in a wet, and some in a dry state.
Q. State the proportion of each.
A. I am unable to state.
Q. Did you see these treated?
A. No, sir.
Q. When was the next lot, if any, that you saw at Dodge's, of which you can particularly speak?
A. In 1857, in the same place.
Q. Where were those?

A. In the same room.

Q. Was it with this lot, as with the others spoken of by you, in the particulars you have stated?

A. Yes, sir.

Q. When was the next lot you saw at Dodge's of which you can particularly speak?

A. I think I can speak of a lot I saw in 1865 or 1866.

Q. Where were these?

A. I think this lot were in Mr. Dodge's drying-room.

Q. About how many?

A. I am unable to state.

Q. Were they in a wet, dry, or commercial state?

A. They were nearly dry.

Q. Did you see that lot treated?

A. No, sir.

Q. When is the next lot you saw there of which you can particularly speak, if any?

A. I cannot speak of any in particular.

Q. When was it that you saw some skins in tubs at Dodge's? State particularly.

A. I could not state the particular time, but think it was in 1866 when he showed me the leather and I examined it.

Q. Where were the tubs situated?

A. In the work-shop; in the room where his kettles—coloring-kettles—are situated.

Q. Did you examine this liquor, or merely casually observe it as you passed through the room?

A. I merely observed it as I stood in the room; I did not examine it.

Q. Did you on the trial at Utica undertake to state the places in Gloversville where you had seen this kind of leather?

A. I think I did.

Q. Did you mention Mr. Dodge's?

A. If I recollect right I think not.

163 Q. After mentioning Place, Russell, and Dunson, did you not state that you did not remember anybody else prior to 1869, who had made such leather?

A. I do not remember now if I did state so or not.

Q. Do you now remember any other except Place, Dunson, Russell, and Dodge?

A. Do not remember any other except those I softened for Judson nearly two years ago.

Q. Please state the time you did those for Judson as accurately as you can.

A. I think it was in the fall of 1870 and into January, 1871.

Q. When you state in substance, on your direct examination, that bark-tanned sheep and lamb skins prepared with fat liquor for the manufacture of mittens and gloves, and made soft and pliable, have been used, and in the market in Gloversville, more or less ever since you lived there, do you refer to the instances now mentioned on your cross-examination?

A. That is what I mean, that I know of.

H. E. KRAUSE.

Subscribed and sworn this 14th day of September, 1872, before me.

J. WENDELL,
Special Examiner.

PHILANDER C. HEACOCK, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

I am forty-nine years old. I reside in Kingsboro', town of Johnstown, Fulton County, about one mile distant from Gloversville. I was born very near here. My main business has been manufacturing mittens and gloves at Kingsboro' ever since I was twenty-one years of age. I am acquainted with an article used in the manufacture of leather for mittens and gloves called fat liquor. I have used bark-tanned sheep and lamb skins in the manufacture of gloves. I have purchased them in the bark-tanned state. I have made them up in the bark-tanned state. I have treated bark-tanned sheep and lamb skins when in the bark-tanned state to prepare them for mittens and gloves. Those that I prepared I treated in fat liquor, heated, with the other ingredients I put in with it. When the liquor was prepared, I put the skins in as warm as it would answer so as not to injure the skins. I kept them in the liquor from twelve to twenty-four hours, as was convenient; sometimes left them in over night, and sometimes from morning till night. They were then dried, then staked, and were then ready to cut, unless we pared them thinner, which we sometimes did. The first year I commenced heating the fat liquor was in 1862. I think I made from seventy-five to one hundred dozen pairs of gloves in 1862 of bark-tanned skins so treated, and some mittens, but can't state how many. We did
164 not continue it long; should say through 1862 and 1863. Made some fifty dozen pairs of gloves from bark-tanned skins so treated in 1863. These gloves so made in 1862 and 1863 I put in market and sold them. The bark-tanned sheep and lamb skins, before being treated in fat liquor, were in a condition we call crust. They were stiff and unfit for gloves until they are made soft in some way. The skins do generally squeak when in the bark-tanned state. Treating them in fat liquor has a tendency to make them soft and pliable, and do away with the squeak from the face. This treatment makes the skins so we can cut gloves out of them. Mr. James L. Northrup, now of Johnstown, formerly of Broadalbin, helped me prepare the first fat liquor, in 1862. After the first preparation of fat liquor, in 1862, spoken of, I continued to prepare it in the same way thereafter. In preparing fat liquor we put in soap, eggs, and something else, but I don't now remember what. I can't say whether we used eggs in all of it or not, or soap. I can't say whether Northrup used any eggs in the first batch we prepared or not, but think we did. In 1862 was the first I fat-liquor heated in bark-tanned.

Q. If any reason existed why you ceased making mittens and gloves from bark-tanned sheep and lamb skins treated with fat liquor, as you have stated, after 1863, please state it.

(Objected to by plaintiff's counsel.)

A. I can't say any particular reason why we quit, except we were in other business and did not care to follow it. Our firm was then, and ever since has been, P. C. and E. G. Heacock. James L. Northrup sold goods for us at that time; that is, in 1862 and 1863. I don't now remember any other ingredients we put into this fat liquor. Our firm sent a good many bark-tanned sheep and lamb skins to Mr. Samuel Dodge, senior, to be made soft; don't remember the year when, but was between 1860 and 1870. After being treated by Dodge, it was good leather, so we could cut them into mittens and gloves.

On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

In 1862 and 1863, and years following, our firm manufactured eighty to one hundred thousand dollars' worth in all per year of gloves and mittens, and that would make a good many hundred dozen. I think that during the years 1862 and 1863 we made mittens of bark-tanned sheep and lamb skins in the bark-tanned state. I could not tell how many, but we sold a quantity; a good many of them. We did make mittens, and may have made gloves, more or less each year since
165 1863, of bark-tanned sheep and lamb skins in the bark-tanned state. The ingredients we used in 1862 and 1863 was sal soda, eggs, soap, and fat liquor. Sometimes we used all and sometimes one or more with fat liquor. I could not state the proportions of the ingredients put into the fat liquor. The skins we treated with fat liquor we afterwards shaved, or mooned, as we call it. I think the kind of gloves we made of the bark-tanned skins so treated were what are called Montepeliers. In 1862, a boy named Canary, since dead, helped me treat the skins with fat liquor; I think some of our other men, but do not remember now who of them. They were all done at our own shop on my premises. I cannot remember which of my men aided me in 1863, but some of them did, and was done in the same place. We would put in from thirty to forty skins at a batch.

Q. Please state as nearly as you are able, from memory, when you first sent skins to Mr. Dodge, as you have stated, since 1863.

A. I am not able to state definitely, as Mr. Dodge has done work for us at various times on various kind of skins for good many years. Mr. Dodge done work for us up to the present time, but think he done no bark-tanned for three or four years last past. Mr. Dodge has done fleshers, and those with the grain on, of bark-tanned sheep and lamb skins. Those treated by Dodge, when returned to us by him, were finished ready for cutting. They were finished on the flesh side so as to use the grain side out. I do not know of any personal knowledge how Mr. Dodge treated these skins.

On his redirect examination by defendants' counsel he further testified as follows, to wit:

I think Mr. Dodge has softened bark-tanned sheep and lamb skins for us since 1863.

Q. Why did you make mittens of sheep and lamb skins in the bark-tanned since 1863, and during those years?

(Objected to by plaintiff's counsel.)

A. I know of no other reason, except to do business. We have made them of late years as cheap as we could, and without little expense, so as to have a cheap article for market. We made them into harvest mittens which are long, and into short mittens, and also into boys' mittens lined with canton flannel. The skins we treated in fat liquor in 1862 and 1863 were not shaved or mooned before treating them or dipping them in such liquor. I think we did treat some of the bark-tanned sheep and lamb skins in 1862 and 1863 in fat liquor alone, without any of the other ingredients.

166 On his further cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

My judgment is that I used fat liquor alone, but not a large quantity. I swear positively I used it alone. I could not state the quantity, nor how many times. This was in 1862. I used it in these two years in different ways by way of experiment.

P. C. HEACOCK.

Subscribed and sworn this 12th day of August, 1872, before me.

J. WENDELL,
Special Examiner.

HENRY HULL, a witness produced, sworn, and examined by and in behalf of the defendants, testified as follows, to wit:

I reside in Gloversville, in Fulton County. I have resided there since 1857. I have been engaged since I resided there in dressing of leather for mittens and gloves and manufacturing mittens and gloves. I am thirty-nine years of age. Before coming to Gloversville I resided at Yeovil, in Summersetshire, in England. I learned the trade of dressing kid-leather in England. I am acquainted with leather known as bark-tanned sheep and lamb skins, and have been since the year 1856.

Q. State if you know whether or not bark-tanned sheep and lamb skins have been used in the manufacture of mittens and gloves in Gloversville; and, if so, in what state or condition have they been so used, and for how long a time.

(Objected to by plaintiff's counsel.)

A. They have been used ever since 1857; they were bark-tanned skins.

Q. The same question repeated.

A. They were brought into market in a rough condition, and were softened and finished for glove-leather; for gloves and mittens.

Q. If you have at any time softened and finished bark-tanned sheep and lamb skins for the manufacture of mittens and gloves, state where, when, with what, and in what manner you softened and finished them for that purpose.

A. I had in Gloversville, in the fall of 1857 and 1858, and I think in 1859, that is one particular lot, sometimes with fat liquor, and sometimes with soap, oil, and eggs; sometimes I used a little salt with the liquor, with both kinds of liquor.

Q. State if you know how many bark-tanned sheep and lamb skins you treated in fat liquor alone in 1857?

A. I could not state exactly the amount of dozens.

Q. State as near as you can.

A. Say twenty-five dozen.

Q. How many in 1858 and 1859?

167 A. May be about the same quantity in each year, may be a little over; is so long ago I cannot remember. I treated these skins in fat liquor at David Spaulding's shop in Gloversville; treated them for David Spaulding. I have treated bark-tanned sheep and lamb skins with fat liquor since that time; done it more of less every year to the present time, in Gloversville, at my own shop.

Q. State the particular manner in which you treated bark-tanned sheep and lamb skins with fat liquor alone, in Gloversville.

A. Sometimes I used it cold; sometimes I used it about milk-warm; sometimes I put it on by sponge; sometimes I dipt them into the liquor; sometimes I could leave them in the liquor an hour—sometimes not so long; was no particular time. I left them in, just as business was, then would take them out of the liquor, put them out doors on lines to dry. After they had been out there two or three days, when they were dry, I took them into the shop and dampened them; then stake them out and finish them, by mooning the flesh off; they were then in a condition for gloves. Before the skins were treated with fat liquor they would be kind of stiff, like shoe-leather; by putting them through the process of fat liquor, or of oil and eggs, the leather becomes soft.

Q. State the condition of these barked-tanned sheep and lamb skins

treated by you as you have stated with fat liquor alone, both before and after such treatment.

(Objected to by plaintiff's counsel.)

A. Before treatment they are in a rough condition, and after treatment they were made soft and pliable for gloves and mittens.

Q. How are they made soft and pliable for gloves and mittens?

A. By applying of the fat liquor to the skins.

Q. What effect, if any, did the application of fat liquor have upon the squeak in these skins?

(Objected to by plaintiff's counsel.)

A. The effect it has on the skin is to remove the squeak.

Q. Did you, at any time, see Adam Quackenbush treat bark-tanned sheep and lamb skins with fat liquor at Gloversville?

A. I did.

Q. When?

A. I think in 1859 and 1860. I don't know in what year it was in particular.

Q. At what place?

A. In my shop in Gloversville.

Q. On one or more than one occasion?

A. I don't recollect but one.

Q. How many skins did he so treat?

A. I think about ten or twelve dozen.

Q. Do you know who they were treated for?

A. I think for himself.

Q. State how he treated them.

A. He treated them with fat liquor by dipping them into the liquor; can't say whether the liquor was warm or cold.

Q. Do you know what use was made of the bark-tanned sheep
168 and lamb skins treated by you as stated?

A. They were used for gloves and mittens.

Q. Do you know what use was made of those treated by Quackenbush?

A. They were manufactured into gloves.

Q. Where did you obtain the fat liquor used by you in the treatment of these skins?

A. A man by the name of Mr. Bickford done all my carting, and he brought it. I don't know where he got it, but think he got it at Heacock's mill. I think I made a mistake in the date, when I saw Quackenbush treat those skins. I think now it was in 1865 or 1866, instead of 1859 or 1860.

On his cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

Q. Did you reside in the same place as Samuel Dodge, senior, the defendant, in England, before you came to this country?

A. Yes, sir.

Were you examined as a witness for defendant in a suit by this plaintiff for an infringement of his patent against Albert Klein, tried at Utica before Judge Hall, in March, 1871?

A. Yes, sir.

Q. Have you since seen or heard any report of your evidence given on that occasion?

A. No, sir.

Q. Has any one since conversed with you in relation to the matter in

controversy here, or in relation to your being a witness in this case; and, if so, who?

A. No, sir.

Q. Were you subpœenaed to attend as a witness here?

A. I suppose I was.

Q. By whom?

A. By James Place.

Q. Is he a brother of Isaac V. Place?

A. I think he is.

Q. Has he been in Isaac V. Place's employ?

A. I don't know.

Q. Did you testify in substance, on the trial at Utica, that the first time you know of bark-tanned sheep and lamb skins being made into leather for gloves in the vicinity of Gloversville by the use of fat liquor was in 1857 and 1858?

A. I think I did.

Q. Did you there testify in substance that on this first occasion spoken of you did in the neighborhood of fifty to seventy-five dozen?

A. I think I testified to that amount, but don't think I stated they were all done by fat liquor.

Q. Were you then asked this question: "When next did you use it?" and in answer to that question did you testify, "I didn't use any after that until about 1860 or 1861?"

A. I think I was asked that question, and I think I did answer so.

Q. Did you understand, when testifying at Utica, that your experience in the use of fat liquor in the vicinity of Gloversville, for softening bark-tanned sheep and lamb skins, was called for?

(Objected to by defendants' counsel.)

A. I don't recollect whether they called for my experience. I don't recollect that they did.

Q. Were you not then asked, in substance, to state the in-
169 stances in which you had so used fat liquor?

A. Yes, sir.

Q. Did you, in answer to such inquiry, state any instances in which you had so used it, other than those mentioned in 1857 and 1858, and again about 1860 and 1861?

A. Not as I recollect; I guess not.

Q. Have you now any more knowledge, or clearer recollection of your experience, in the use of fat liquor than you had at Utica?

A. Not any more knowledge or clearer recollection of my experience in the use of fat liquor now than then.

Q. On the occasions of the use of fat liquor spoken of by you, did you use it mostly cold or warm?

A. Cold.

Q. Did you find the use of it cold just as good as warm for your purpose?

A. I found it just as good cold as warm, only it took a little longer to penetrate the skin.

Q. Did you testify thus at Utica on this point, that "it is just as good cold as it is warm; there ain't any difference?"

A. I think I did.

Q. Where did you treat those you speak of in 1857 and 1858?

A. At David Spaulding's shop at Gloversville.

Q. Was it in his old shop?

A. Yes, sir.

Q. Who were you to work for at that time?

A. For Mr. Spaulding and different men.

Q. Please state what time you commenced at Spaulding's, and when you quit.

A. I commenced Feb. 7th, 1857, and quit in 1859.

Q. Did you quit the shop in 1859?

A. Yes; I quit the shop in 1859.

Q. What time in 1859?

A. In the fall of 1859.

Q. For whom did you do these you treated with fat liquor at Spaulding's shop?

A. For Mr. Spaulding.

Q. Did they consist of one lot or different lots?

A. Different lots.

Q. When was the first lot, and how many did it consist of?

A. I treated the first lot some time in 1857, but cannot tell exactly at what time. The amount of dozen, I could not say positive, were in the neighborhood of twenty-five to fifty dozen.

Q. Was it in cold or warm weather?

A. I am not certain about that.

Q. In experimenting upon this lot, did you first use soft soap and soda before you used fat liquor?

(Objected to by defendants' counsel on the ground that the question assumes the witness was experimenting.)

A. I don't recollect that I did use soft soap or soda. I did not experiment on that lot of skins.

(Plaintiff's counsel objected to the latter part of the answer, and insists that, whereas defendants' counsel, in objecting to the question, stated in the presence and hearing of the witness the grounds of their objection, to wit, "on the ground he was experimenting," contrary to the practice and agreement of counsel. Defendants' counsel deny the statement made in plaintiff's objection aforesaid.)

170 Q. Did you or did you not, on the trial at Utica, in speaking of the treatment of bark-tanned skins at Spaulding's in the fall of 1857, testify that you first got some soft soap and soda, and tried that on the skins, and it did not appear to work good; didn't soften the skin to suit me; so I went to the mill and got the fat liquor and tried that?

A. I don't remember whether I did or not.

Q. Will you swear you did not so testify in substance?

A. No; I would not swear to that.

Q. If you did so testify, did it correctly represent the fact?

A. Yes, sir.

Q. In treating the bark-tanned skins you have spoken of at Spaulding's, did you try soft soap and soda upon them?

A. I used soft soap, soda, and eggs on part of that lot of skins.

Q. Did you use soft soap and soda without eggs upon any of them?

A. I don't think I did alone, without oil or eggs.

Q. Will you swear positively you did not?

A. No, sir.

Q. Did you treat some of them with soft soap, soda, and oil?

A. I did.

Q. Did you treat other, some with soft soap, soda, and eggs, without the oil?

A. I think I did.

Q. Did you treat others with soft soap, soda, oil, and eggs?

A. I did.

Q. Did you try any process on any of these skins that did not appear to work good—that did not soften the skins to suit you?

A. No, sir.

Q. Then why did you so testify on the trial at Utica?

A. Sometimes I put a lot of skins through, but they did not all soften alike.

Q. Is that the only explanation you can give for testifying at Utica that you tried soft soap and soda, and it did not appear to work well; did not soften the skins to suit you; and testifying here that you did not use any process on these skins that did not appear to work well—that did not soften the skins to suit you?

A. I don't recollect to testifying to any such a thing at Utica.

Q. Can you make any other or further explanation?

A. I don't recollect of stating so at Utica.

(Plaintiff's counsel objects to the answer as not responsive to the question.)

Q. Question repeated. Witness says he does not understand the question, and desires to be informed, which, by consent of counsel, was done by the examiner, when witness made the following answer:

A. I can give no further explanation.

Q. On these skins treated at Spaulding's, did you, in some cases, use the fat liquor warm, and some cold?

A. I sometimes used it milk-warm, but mostly cold.

Q. When was the next lot you did at Spaulding's?

A. I done some in 1858.

Q. What time a year?

A. I could not say.

Q. How many at that time?

A. From twenty-five to fifty dozen; may be more, may be less.

Q. How many? State as nearly as you are able.

A. Well, say fifty dozen.

Q. How many of these were treated with fat liquor?

A. About twenty-five dozen.

171 Q. Was the fat liquor warm or cold, or both?

A. Both.

Q. Which the most?

A. I think the most was cold.

Q. How were the other twenty-five dozen treated?

A. Treated by eggs, oil, soap, and sal soda.

Q. Substantially the same as to the variety of processes as those treated in 1857?

A. Just in the same way as they were in 1857.

Q. In treating these and those in 1857, did you apply it with a sponge or dip the skins?

A. Done it both ways.

Q. Which the most?

A. I think about half each way.

Q. Did you testify on the trial of Utica that you did most of them by sponging; that a few of the skins you dipt?

A. I don't recollect that I did state that.

Q. Do you recollect that you did not so state?

A. I don't recollect.

Q. If you did any more at Spaulding's, state when and how many.

A. I think I done some in January and February, 1859, from eighteen to twenty-five dozen.

Q. Are you positive about these?

A. Yes; I am pretty positive.

Q. How many of these did you treat with fat liquor, and how many by other methods?

A. I think there were no more than a few dozens of them treated with fat liquor.

Q. Is what you have stated in regard to the different modes of treating the others true of these also?

A. Yes; just the same.

Q. Since your last answer and during the recess have you had any conversation with either of defendants, or their counsel, in relation to your evidence or the matter in controversy in this suit?

A. Yes, I had a conversation with the counsel.

Q. After applying the fat liquor to the skins treated by you at Spaulding's, what next did you do with them?

A. Dried them.

Q. Where did you hang them to dry?

A. Sometimes out-doors, and sometimes up-stairs in the shop.

Q. On the trial at Utica did you testify that you hung them up stairs to dry, and say nothing about hanging them out-doors to dry?

A. I don't recollect to testify so.

Q. Will you swear you did not?

A. No, sir.

Q. After the first drying, what was the next step?

A. Put them in order to finish, by dampening them. Sometimes I dampened them by a sponge; sometimes by a brush, sprinkled it on.

Q. Did you dampen them down in a box, and let them stay there till next morning?

A. After I dampened them I laid them away in a box or barrel; let them lay until the next morning. I did not dampen them down in a box, but laid them away in a box or barrel after I dampened them. We dampen them on a table. We do not dampen them down in a box once in a thousand times.

Q. On the trial at Utica did you testify that you dampened them down in a box?

A. I don't recollect.

Q. Do you remember whether you did or did not?

A. I don't remember.

Q. After dampening them down, as you have stated, what was the next step?

172 A. Staking and finishing them.

Q. Were they not mooned after dampening?

A. Yes, they were; is all one thing. Some call it finishing.

Q. Was the mooning-iron the last thing you applied to the skins in the finishing?

A. Yes, sir; generally.

Q. Before dampening them down did you apply the fat-liquor to them more than once; and if so, how many times?

A. Sometimes once, sometimes twice; depended how the skins was.

Q. Were they dried between the several applications of the fat liquor?

A. Sometimes they was, and sometimes they wasn't.

Q. During the entire process how many times were they hung up to dry and taken down?

A. Sometimes once, and sometimes twice.

Q. On the trial at Utica did you testify, in substance, that they were taken down three times?

A. I don't recollect.

Q. If you did, was it true in fact?

A. If I did so, it must be true.

Q. Who was at work at Spaulding's shop during the time you were there, from Feb. 7th, 1857, to Nov., 1859?

A. In one part of the shop that I worked in, John Broderick worked, and a man by the name of Coley Kane. I think there was one of John Broderick's brothers. I don't think of any other, except one Henry Hambridge worked in the shop with me from Feb. to May, 1857.

Q. Were there any others worked on the premises beside those you have mentioned?

A. Not on these premises in question; not as I know of.

Q. While you were there were there any other persons employed in his manufacturing business beside those you have mentioned?

A. Yes. Arthur Gillett used to come over nights and mornings, and cut some gloves for me. That is all I recollect.

Q. When and where did you next use fat liquor in the dressing of bark-tanned skins?

A. At my own shop, in 1861. I think I don't remember doing any in 1860.

Q. How many at that time?

A. About ten or fifteen dozen.

Q. Did you use the liquor warm or cold on that occasion?

A. I think I used it cold.

Q. When and where did Adam Quackenbush treat those you speak of?

A. He treated a lot in my shop. I think it was in 1865 or 1866. I think it was in 1866.

Q. Did you assist him?

A. I don't recollect whether I did or not.

Q. Do you refer to the same lot mentioned by you on the trial at Utica, treated by him at your shop?

A. That is the lot I refer to.

Q. It appears by the report of your evidence, on that trial at Utica, that you then stated that you and Quackenbush did this lot together. What is your present recollection on this point?

A. I think I stated at Utica we bought the skins together. I don't think I stated anything about dressing them together, and I think he did the work on them; am pretty sure he did.

Q. How many were there of this lot?

173 A. I think there was ten or twelve dozen.

Were they all treated with fat liquor, or a portion of them with something else, and if so, what?

A. I think they was all treated with fat liquor.

Q. In speaking of the treatment of this lot of skins, on the trial at Utica, did you say "We done five dozen of them in fat liquor, and five dozen with soft soap and soda, and oil mixed in, for to see which would be the best five dozen?

A. I don't recollect testifying to that.

Q. Will you swear you did not so testify in substance?

A. No.

Q. If you did so testify, was it a correct statement of the fact?

A. I think so.

Q. Did you dip this lot, or apply the fat liquor with the sponge, or both?

A. I think part of them was done by the sponge, and part of them dipt.

Q. What season of the year was it?

A. In the spring, I think, in the forepart.

Q. Did you state in substance on the trial at Utica, that it was in the winter season; you "thought some were in November or December, but it might have been in January?"

A. I don't recollect testifying to that.

Q. Do you remember whether you did or did not so testify?

A. Don't remember.

On his redirect examination by defendant's counsel the witness further testified as follows, to wit:

Q. In your treatment of bark-tanned sheep and lamb skins, for the manufacture of mittens and gloves, what reason, if any, existed for treating part of them with fat liquor alone, and part of them with soap, eggs, sal soda, and oil?

(Objected to by plaintiff's counsel.)

A. I have got two or three reasons. One reason is, that two lots of skins ain't alike, and the reason of that is you have to treat them different. Sometimes a lot of skins is harder, more bonier, that is, stiff and harder. That is the reason I use eggs, oil, sal-soda, and soft-soap. Sometimes I use a little salt. Next reason is that I use these articles *is*, because I haven't got a small lot of skins. It don't pay to send to the mill to get fat liquor.

Q. Under what circumstances do you use fat liquor alone?

(Objected to by plaintiff's counsel.)

A. Because sometimes I have ten or fifteen dozen of skins is a little less trouble to send to the mill and get a half-barrel of fat liquor.

Q. What class of skins did you treat with fat liquor alone?

(Objected to by plaintiff's counsel.)

A. Lamb-skins generally.

Q. Why lamb-skins?

(Objected to by plaintiff's counsel.)

174 A. Because they are a lighter skin, and softer and more pliable.

Q. What class of skins did you treat with eggs, oil, sal-soda, and soap? Please describe them.

(Objected to by plaintiff's counsel.)

A. Bark-tanned sheep, heavy and long. Sometimes some lamb-skins that are kind a hard and bony.

Q. Why did you treat the class of skins in your last answer mentioned with eggs, oil, sal-soda, and soap, instead of fat liquor?

(Objected to by plaintiff's counsel.)

A. The reason is because the skins are hard and require a stronger liquor than fat liquor is to make them soft.

Q. Please state when or under what circumstances you used salt.

(Objected to by plaintiff's counsel.)

A. The reason I use salt is because it creates a moisture to the leather.

Q. On what class of skins do you use salt?

(Objected to by plaintiff's counsel.)

A. Where the skins is hard and bony.

Q. What is the effect of salt upon such skins?

(Objected to by plaintiff's counsel.)

A. It creates a dampness and keeps the skin soft.

Q. Were you present in your shop when the Quackenbush skins were treated?

A. I don't recollect for certain, but I think I was.

Q. Do you now remember where the Quackenbush skins were obtained?

(Objected to by plaintiff's counsel.)

A. I don't remember for certain where they were retained, but I think of Churchill and Hutchinson.

Q. Do you remember what was done with them after they were treated?

(Objected to by plaintiff's counsel.)

A. They was cut up and manufactured into gloves and mittens.

Q. What, if any, interest did Quackenbush have in these skins?

(Objected to by plaintiff's counsel.)

A. He owned part of them, and I don't know but he owned the whole at that time.

On his further cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Are you a chemist, and do you understand chemistry?

A. No, sir.

Q. Do you call ten or fifteen dozen skins a small or large lot?

A. Ten or fifteen dozen skins I call a large lot for me, according to my means.

(Plaintiff objects to that portion of witness'es answer referring to himself as not responsive to the question. Defendants' counsel insist in receiving and entering witness'es answer.)

Q. Answer the last question generally, without any reference to yourself.

A. It is called a small lot.

175 Q. Did you ever try fat liquor on bark-tanned sheep-skins and find that it did not soften them sufficiently for your purpose?

A. No, sir: not that I recollect.

Q. Why, then, did or do you use the other processes spoken of by you on such bark-tanned sheep-skins as you have mentioned, and fat liquor on other skins?

A. For two reasons: one reason is that one lot of skins is different from another, and the second reason is it comes a little handier to me to use the eggs and oil than to go to the mill for fat liquor.

Q. If you never tried fat liquor when it did not answer your purpose, how did you know or why did you think it would not when applied to heavy, bony skins you speak of?

A. I never tried any fat liquor on any experience, but my own judgment teached me better to know the harder the skins was the more nourishing substance they want to make them soft.

Q. Have you been using fat liquor on bark-tanned sheep and lamb skins since 1869?

A. Yes, sir.

On his further redirect examination by defendants' counsel, the witness further testified as follows, to wit:

Q. State whether or not, in the use of fat liquor by you since 1869, you used it in substantially the same manner as you did that used by you prior to 1869.

(Objected to by plaintiff's counsel.)

A. I used it just the same as I did before 1869.

Q. State, if you know, whether or not it produced substantially the same effect upon the skins.

(Objected to by plaintiff's counsel.)

A. I didn't see any difference.

HENRY HILL.

Subscribed and sworn this 17th day of September, 1872, before me.
J. WENDELL,
Special Examiner.

JAMES B. CHAPMAN, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

I reside in Broadalbin, Fulton County, about seven miles from Gloversville; I have resided there in the neighborhood of twenty years, except about two years I resided in Amsterdam, about ten miles from Broadalbin. I am forty years of age. I am now engaged in selling mittens and gloves, and have been so engaged, as a business, since 1859. I resided in Broadalbin in the year 1855 and 1856. In those years I was engaged in doing job-work, dressing deer and sheep skins for mittens and gloves at Broadalbin. In that business I operated a skin-mill lo-
176 cated at Broadalbin. I knew James L. Northrup in 1855 and 1856, and have been acquainted with him ever since. He, Northrup, resided in Broadalbin during the years 1854, 1855, and 1856. During those years he was engaged in manufacturing mittens and gloves at Broadalbin. I am acquainted with bark-tanned sheep and lamb skins, and have been for twenty years. I know that James L. Northrup during the years 1855 and 1856 dipped bark-tanned sheep-skins in fat liquor at Broadalbin—at my mill that I was running at that time. He took the fat liquor, warmed it, and dipped the skins into it. After they were thoroughly saturated he hung them out on the lines to dry. Then he took them to his shop, staked them, and cut them. I handled these bark-tanned skins before they were subjected to fat liquor. They were of a tan color and tight skin, not elastic at all, and squeaky. I examined these skins after they were subjected to fat liquor; they were elastic, pliable, and what we called plump, elastic skin, and squeak was gone. After these skins were subjected to fat liquor they were suitable for gloves and mittens—what we call "dog-skin gloves." These skins were not suitable for such gloves before being subjected to fat liquor. Mr. Northrup dipped them at different times. I could not give any idea of numbers; could not give exact numbers; but he dipped, I think, from twenty-five dozens to forty dozens at a time. He dipped them several times in 1856; I recollect but once in 1855. I do not know that Mr. Northrup during these years treated the skins with anything else—yes, he treated some with eggs. Those I have spoken of before were treated with fat liquor. Nothing else put in the fat liquor, to my knowledge. Mr. Northrup got the fat liquor of me at Broadalbin, at my mill. The quor that I see him use was prepared at my mill and warmed in my kettle, and the skins so prepared were hung on my lines to dry. I saw him take the liquor from my tubs, put it in the kettle, warm it, and put the skins in. I should think the fat liquor was something warmer than what we call milk-warm. I did not put my hand into it till after the skins had been dipped into it, and it must have been warmer than milk-warm before the skins were put in. In 1857 and 1858 I was engaged in the manufacture of mittens and gloves at the village of Amsterdam, in Montgomery County, in connection with James E. Warring. Our firm-name was Warring & Chapman. Our firm, in 1857, had bark-tanned sheep and lamb skins treated for the purpose of making them soft for mittens and gloves. The skins were treated at Gloversville by Samuel Dodge, senior. Before being sent to Dodge for treatment, the skins were close, tight, squeaky. After being treated they were soft
177 and elastic, and were suitable for mittens and gloves, button-tops, gauntlets, and what are called dog-skin gloves.

Q. State whether or not you had any knowledge of the sending of these skins to Dodge for treatment before or at the time they were sent.

(Objected to by plaintiff's counsel.)

A. I did not. I took them from Mr. Dodge's shop after treatment; I think there were twenty-five dozen skins. I have not been engaged in the manufacture of mittens and gloves since 1858. Since that I have sold goods one or two years for Melancthon Belding, part of a year for Jonathan Ricketts, and the balance of the year for Hewlett and Van Wort, and I think for the last ten years for Isaac V. Place, and I. V. and J. W. Place.

Q. State whether or not during the time you have sold goods for I. V. Place, and I. V. and J. W. Place, you have sold for them what are called and known as dog-skin gloves made from bark-tanned sheep and lamb skins made soft and pliable before being made into gloves.

(Objected to by plaintiff's counsel.)

A. Yes, sir; I have always sold them ever since I have sold goods for I. V. Place, and I. V. and J. W. Place. I have sold them every year, some years more than others. I should say while I was on the road I might have sold 50 dozen a year, some years 100 dozen pairs. And since I have been selling to jobbers from 200 dozen to 500 dozen a year. It is merely guess-work with me.

Q. State as near as you can, and according to your best judgment, the number of dozens of this kind of gloves sold by you per year for Isaac V. Place, and I. V. and J. W. Place, since you have been in their employ, selling goods for them.

(Objected to by plaintiff's counsel.)

A. I should say one hundred dozen a year.

On his cross-examination by plaintiff's counsel the witness further testified as follows, viz:

Q. Are you now in the employ of Isaac V. and J. W. Place?

A. Yes, sir.

Q. How long have you been in the employ of Isaac V. and J. W. Place?

A. I cannot tell how many years, but ever since they are in business.

Q. State the time as accurately as you can.

A. It seems to me four or five years.

Q. How long were you in the employ of Isaac V. Place before commencing for the firm?

A. Five or six years.

Q. Have you, during the time you have been employed by them or either of them, been travelling, selling their goods?

A. Yes.

178 Q. Down to how late a time did you peddle their goods about the country?

A. Up to five years ago; may be longer.

Q. And since that time you have been selling by sample, have you?

A. Yes.

Q. Did you know that Isaac V. and John W. Place were sued by Mr. Russell, this plaintiff, for an infringement of his patent for treating bark-tanned sheep and lamb skins?

A. Yes, sir.

Q. How early did you know that?

A. I cannot tell just how early, but shortly after he sued them, I presume.

Q. Were you a witness on the trial of that cause in Albany?
A. I was not.
Q. Was you a witness in a similar trial at Utica against Albert Klein?
A. No, sir.
Q. Who, if anybody, was with you in business when you operated a skin-mill at Broadalbin?
A. My brother, Thomas Chapman.
Q. Who, if anybody, worked in your skin-mill at the times Mr. Northrup treated bark-tanned skins there?
A. Moses P. Fuller, Richard Nell, and Ira Billingham.
Q. When was the first lot treated by him? State particularly.
A. In 1855, I think in October.
Q. How long at that time had you been running that mill there?
A. I commenced that spring.
Q. Who, if you know, run the mill before you?
A. James Newton.
Q. Had Mr. Northrup been engaged in the manufacture of mittens and gloves at Broadalbin prior to the time you took the skin-mill; and, if so, how long?
A. He was so engaged for two or three years.
Q. Where, if you know, did he get the first lot of these skins he so treated?
A. He got them of a Mr. Jones, in New York.
Q. Were they common bark-tanned sheep and lamb skins?
A. I should say they were.
Q. Had you any interest in Mr. Northrup's manufacturing business, or the skins treated by him, of which you have spoken?
A. No, sir.
Q. Did Mr. Northrup personally treat or superintend the treatment of this first lot of skins you speak of?
A. He did treat them.
Q. Who, if anybody, assisted him?
A. Not any one.
Q. How many skins were there in this lot?
A. I should think somewhere from 25 to 40 dozen.
Q. How long a time did he occupy in treating them?
A. I could not tell exactly. I should think from 30 minutes to an hour.
Q. Do you mean from the time they were brought there till they were hung out to dry?
A. I mean from the time he commenced dipping them till he took them out.
Q. How long did the whole process occupy, including the heating of the liquor, until the last of the lot were ready to hang up?
A. I should think an hour.
Q. Did you stand by all the time and witness the whole?
A. No, sir.
Q. In what kind of a vessel did he dip them?
A. I think it was a hogshead sawed in two; used one end of it.
179 Q. When was the second lot treated by him? State particularly.
A. I think the next lot was in June, 1856—might have been May, but think in June.
Q. How many of these?
A. I could not tell.

Q. Tell as near as you can.

A. I should think from fifteen to twenty-five or thirty dozen; somewhere about there.

Q. Who treated these?

A. Mr. Northrup, personally, and did all I have spoken of as treated by him.

Q. How long was he engaged in treating the second lot, including the treating of the liquor?

A. I should say an hour—cannot tell accurately; that may be too long or too short; cannot tell how long a man might be standing around my mill.

Q. When was the third lot treated by him, spoken of by you?

A. I cannot tell the time.

Q. Tell as nearly as you can.

A. I don't think it was a great while after the other.

Q. How many were there in this lot?

A. I should think some fifteen or twenty-five dozen.

Q. When was the fourth lot treated, if there was a fourth lot?

A. I think that is all I remember.

Q. Are you able to swear of your own knowledge that there were no other ingredients mixed with the fat liquor on these occasions?

A. No, sir.

Q. How long did you run this skin-mill after the last lot treated by Mr. Northrup, as you have stated?

A. Until November or December, 1856.

Q. You did not assist Mr. Northrup in treating those skins, did you?

A. No, sir.

Q. Have you any means of knowing the temperature of the liquor, except casual observation, while Mr. Northrup was treating the skins?

A. That was all.

Q. Were these different lots treated by Mr. Northrup a part of the lot purchased of Jones?

A. The first lot was.

Q. Where were the other lots procured by him, if you know?

A. I do not know.

Q. Were they the common bark-tanned sheep and lamb skins?

A. Yes, sir.

Q. Did Mr. Northrup continue there in the manufacturing business as long as you run the mill?

A. Yes, sir.

Q. Did he, during the years 1855 and 1856, manufacture any mittens and gloves of skins in the bark-tanned state?

A. He manufactured mittens.

Q. Do you know whether he did or did not manufacture gloves also of such leather during that time?

A. I do not.

Q. When and where did Mr. Northrup treat bark-tanned skins with eggs?

A. I don't know, but I see him treat them so in 1855 and 1856, as I saw him treat a great many skins so. It was in the yard by his cutting-shop.

Q. About how many lots, during those two years, did he treat with eggs to your knowledge?

A. I should think a half dozen different lots.

Q. How large lots?

A. Rather small lots; I should think not over three or four dozen in a lot—may be not that many.

180 Q. Were they the common bark-tanned sheep and lamb skins?
A. Some of them were, and some of them were cape sheep.
Q. Did he so treat skins at different times in 1855 and 1856?
A. Yes, sir.
Q. How late in 1856?
A. It was pretty well along in the season; I think probably as late as October.
Q. Did you see the leather after the egg treatment?
A. Yes, sir.
Q. Was it soft and pliable and suitable for gloves and mittens?
A. They would do for mittens and gloves.
Q. Do you know what other modes of treatment he employed with the bark-tanned sheep and lamb skins during these two years?
A. No, sir.
Q. When did you go into business at Amsterdam?
A. In April, 1857.
Q. How long did you there continue?
A. Two years—not quite two years.
Q. Who were in your employ there in manufacturing during these two years?
A. A man named Richards, Richard Nell, Ira Billingham, John Holland, a man by the name of Chase; that is all I think of. My brother Thomas was not employed there.
Q. Did you manufacture any mittens or gloves there from sheep and lamb skins in the bark-tanned state?
A. Yes, sir.
Q. About how many?
A. I could not tell how many, but quite a good many, especially mittens.
Q. Did the use of this leather run along through the two years?
A. Yes, sir.
Q. Were you there at the manufacturing place most of the time during the two years?
A. Yes, sir; most of the time.
Q. About what time was this lot treated by Dodge for you, spoken of on your direct?
A. I think it was along in September, 1857.
Q. Were they taken to Mr. Dodge's place in Gloversville; and, if so, who took them there?
A. They were taken there by James E. Warring, my partner.
Q. Did you have any other bark-tanned skins treated for the purpose of softening them during those two years?
A. No, sir.

On his further direct examination the witness further testified as follows, to wit:

Q. Please state, if you know, what class or grade of bark-tanned sheep and lamb skins was treated by Northrup with fat liquor alone, so far as you know, and what class or grade with the egg process?
A. Those treated by fat liquor were the finest, thinnest, and best skins, sorted out, but don't know what grade or class by the egg process, as I did not examine them. I assisted Mr. Northrup in assorting the first lot treated with fat liquor.

On his further cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

Q. State whether between the assorted skins just spoken of by
181 you and the general average of bark-tanned sheep and lamb skins, there was or was not considerable difference in quality.

A. Yes, there was considerable difference.

JAMES B. CHAPMAN.

Taken and subscribed and sworn before me this 17th day of October, 1872.

J. WENDELL,
Special Examiner.

AARON SIMMONS, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

My age is 53 years. I reside at Gloversville, and have resided there about 34 years, except about one and a half years. My principle business is tanning buck-skins, (mostly,) fleshers, calf-skins, dog-skins, coon-skins, panther-skins, squirrel-skins, fox-skins, for gloves and mittens. I have been engaged in this business at Gloversville for from 22 to 25 years, except about 1½ years, when I was engaged in the same business in Greene County, N. Y. I dressed them principally with fat liquor. Some fifteen years ago I used some salt, cream of tarter, and soap and sal-soda with the fat liquor. For the last ten or twelve years I have principally used fat liquor alone, except sometimes, when it is necessary to have skins stand over Sunday, I put in a considerable quantity of salt to preserve them. I take these skins in the raw and tan them in that way. The general effect produced by the use of fat liquor is of a tanning nature, if the fat liquor is good. I have had it when it was sour, when it would spoil it. If I had what we call good luck with them, the leather would be fit for mittens and gloves. The manner of applying fat liquor depends on the condition of the stock when I receive it. I have usually used three processes. The first time I apply it in its full strength, usually; the second time, reduced by water about one-third; the third time, reduced one-half or more, depending on the strength of the liquor. I used both warm and cold. I have heated it boiling hot, for the purpose of cleansing, then skim it, and have used it on skins as warm as they would bear it. I have had it boiling hot, for the purpose of cleansing it, the scum rising to the surface, when I skim it and use it on the skins as warm as they will bear; and I have used it warm, when I did not heat it for cleansing. I have obtained the fat liquor I have used for ten or twelve years of different skin-mills at Gloversville and vicinity. This fat liquor was made in these mills by the dressing of oil-dressed leather. I usually receive deer-skins in
182 the raw, with the hair and grain taken off. In some instances I take the hair and grain off myself. The fleshers, when I receive them, are in pickle or preserved in salt. I have treated Indian-tanned deer-skins with fat liquor for 15 to 18 years; think about one thousand skins per year. They were treated with fat liquor for the purpose of making them soft. These Indian-tanned skins are used, after being treated with fat liquor, for gloves and mittens. These skins when I receive them are tanned, but are usually hard and dirty. I have also used fat liquor in tanning furs I spoke of.

Q. What effect is produced by the application of fat liquor to the Indian-tanned deer-skins?

A. It has the effect to tan the untanned portion of it; that is all.

Q. What effect is produced to the Indian-tanned deer-skin by the application of fat liquor to it when the skin is in a hard state and unsuitable for use in the manufacture of gloves?

(Objected to by plaintiff's counsel.)

A. It has a tanning tendency; it tans the portion of the skin that is untanned, and makes it soft for mittens and gloves.

Q. Please state the effect produced by the application of fat liquor on fleshers.

A. I have applied it warm and it spoiled them out and out, and not much better cold. That is the general effect in applying it warm or cold, and that is the general effect on fleshers, as far as my experience goes.

Q. Have you used it much on fleshers?

A. No, sir.

Q. State as near as you can how many skins you have treated with fat liquor alone, as stated by you, to prepare them for mittens and gloves, per year, for the last ten or twelve years, in Gloversville.

A. I should venture to say 15,000 per year.

Q. State the manner of applying the liquor and the length of time you leave the skins in the liquor.

A. I dip the skins in the liquor, and I like to have them lay in about twelve hours each time I put them in. I have been obliged to get them out within an hour, and sometimes to leave them in three days and longer, on account of rain or snow storm. I have been obliged to get them out in an hour when they were in nearly or quite a damaged condition when I received them; they would not bear to remain in longer, but would get them out where the air would strike them.

On his cross-examination by the plaintiff's counsel, the witness further testified as follows, to wit:

Q. Please state the different processes, in detail and in their order, employed by you in tanning skins spoken of with fat liquor, other than the Indian-dressed.

A. I take a skin in the raw, dry, put it into water from 24 hours to a week, according to the season of the year; then they are taken
183 out and broke, made soft, put on the beam, broken with the knife; next the hair and grain are removed or taken off on the same beam with the knife; then they are put in the fat liquor and remain from one hour to twenty-four hours, usually about twelve hours; then taken out and dried; when dried, put into a liquor made of water and soda-ash. After laying 12 to 15 hours in this liquor, I put them on a machine and wring out the fat liquor previously put in and the filth that is in the skin; then stretched out, put back into fresh fat liquor, and remain usually twelve hours; then taken out and dried; then brought back and put into soda-ash liquor, and remain from 12 to 15 hours; then taken out and wrung as before; then we put them in fat liquor again, reduced about one-half, and remain from 12 to 15 hours; then put out and dried; then put into water and soda-ash again; remain from 12 to 15 hours; then I put them on the wringing-machine and cleanse, or scouring them out clean, (we call it scouring;) then they are hung out-door or in a loft for drying partially. After suitably dry, they are taken down and staked; then dried more; then staked again; then dried dry; dampened and staked again, or finished up, as we call it; then they are smoked ready for use.

Q. Does the scouring of the skin as you have described take out all the fat liquor, except what has been used in the tanning of the skin?

A. I don't use any except for the tanning, and when I cleanse I take that out.

Q. Does the scouring take out all the fat liquor except what has been absorbed by the skin, if any, in the tanning of it?

A. Yes, sir.

Q. About how long does the tanning process now described by you occupy from the first step, when the skin is in the raw, until it is fit for use?

A. About one month, on the average seasons of the year.

Q. What is the expense per dozen or hundred for this kind of tanning?

A. From twenty-two to fifty-five dollars per hundred skins, according to the size and heft of the skin.

Q. Are the fleshers spoken of by you sheep and lamb skins with the wool and grain taken off?

A. Yes, sir.

Q. About how many times have you tried to dress this class of skins with fat liquor?

A. I should think perhaps a dozen times.

Q. And the effect upon the skin was not good in these instances?

A. Not good in making good leather.

Q. In what way, if you know, were the Indian-dressed skins spoken of by you prepared before they came to your hands?

A. I do not know.

Q. Were some portion of these skins in an untanned state when they came to your hands?

A. They would be partially in an untanned state.

Q. Was your treatment of these with fat liquor for the purpose of completing the tanning, or of tanning such parts of the skin as were untanned when they came to your hands?

184 A. Yes, sir.

Q. Was it the untanned parts of the skin you spoke of in your direct examination as being hard?

A. Yes; but there were some portions hard with dirt that had been tanned.

Q. When they came to your hands was there any squeak in them?

A. No, sir; none that I heard.

Q. Did you treat the Indian-dressed substantially as you have described your treatment of other skins treated with fat liquor?

A. Yes, sir; substantially the same.

On his redirect examination by defendants' counsel the witness further testified as follows, to wit:

Q. State particularly, if you can, the condition of the Indian-tanned skins when received by you for treatment with fat liquor.

(Objected to by plaintiff's counsel.)

A. They had been partially tanned; a portion of the skin in certain skins were perfectly soft and nice, and another portion with a hard, raw, untanned butt and neck. There are other skins which have the appearance of being tanned, but are not plump and soft enough.

Q. State the condition of these skins after treating them with fat liquor.

(Objected to by plaintiff's counsel.)

A. The untanned portions are tanned, and the dirty are made clean and suitable for gloves.

Q. Do these skins when treated with fat liquor, in the cases where they were hard or had hard spots in them, remain in the same condition after treatment with fat liquor? And if not, how are they after such treatment?

A. No; they are made soft.

Q. What makes them soft?

A. Well, they were made soft by fat liquor, water, and soda-ash and labor.

Q. In speaking of the expense of dressing skins, when you stated it to be from twenty-two to fifty-five dollars per hundred, did you mean deer-skins in the raw with the hair and grain on?

A. Yes, sir; that included beam-work and all, taking them with the hair on and getting them ready for the shears.

On his further cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. In treating the Indian-dressed skins with fat liquor, as described by you, did you put those with untanned neck and butt, and those which appeared to have been tanned but had some hard spots in them from dirt or other cause, together and subject them all to the same treatment?

A. Yes, sir.

Q. State whether the expense in dressing sheep or lamb skins from the raw, in the way you have described, would be materially
185 different than that of deer-skins of the same weight.

A. If I were to dress domestic sheep or lamb skins, I should charge more for them than I would for deer, as they are closer texture and harder to dress. I should not charge as much for the lamb as for the sheep skin.

Q. Were the untanned portions of the skins treated by you as described made soft?

A. Not always.

Q. Was that the general effect?

A. Yes, sir.

On his further redirect examination by defendants' counsel the witness further testified as follows, to wit:

Q. State what in your judgment is the reason why fat liquor applied to fleshers does not make good leather.

(Objected to by plaintiff's counsel.)

A. A portion of this process for preserving the skins in the first place is vitr'ol and salt. The portion of vitr'ol that is in the skin kills the nature of the fat liquor and separates the tanning qualities from the fat liquor, and makes sad oil of the fat liquor and forms an oil that lye won't cut, without being so strong as to destroy the skin.

Q. Where are these fleshers obtained from?

A. From Europe; they are imported skins.

On his further cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Are you a chemist, either theoretical or practical?

A. No, sir.

AARON SIMMONS.

Taken, subscribed, and sworn this 18th day of October, 1872, before me.

J. WENDELL,
Special Examiner.

NATHANIEL BENTLEY, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows:

My age is 29 years. I reside in Gloversville. Have resided there about eight years. My business is manufacturing of gloves and mit-

tens. I have a partner, G. W. Jeffers. Our firm-name is G. W. Jeffers & Co. Have been so engaged as partners for five years, at Gloversville. We have used bark-tanned sheep and lamb skins in the manufacture of mittens and gloves. I should think we used about one hundred and twenty-five dozen skins in all, all done this year. They were in the bark-tanned state.

Q. What, if anything, did you have done to them to make them suitable for mittens and gloves? State in detail.

(Objected to by plaintiff's counsel.)

186 A. We had them dressed; Mr. Russell & Co. done some of them, and Mr. Dodge part of them. I mean Nathan C. Russell & Co., of Gloversville. I spoke to Mr. Russell about dressing them before he dressed them.

Q. State what was said between Russell and you about dressing them.

(Objected to by plaintiff's counsel.)

A. I asked Mr. Russell what he asked for dressing the skins. He said he charged one dollar a dozen. I don't know as I made him any reply after that. A few days after that I took all I had over to Russell's to be dressed; were about one hundred dozen bark-tanned sheep-skins.

(In addition to the objection to the above question, plaintiff's counsel objects to the above evidence relative to the taking of the skins to Mr. Russell's.)

Q. Was there anything said in your conversation with Russell as to how, or with what, you desired your skins dressed; and, if so, what?

(Objected to by plaintiff's counsel.)

A. I don't know as anything was said, only I told him I wanted the skins made soft, so they would do to cut gloves.

Q. Did Russell undertake to dress these skins after you took them there?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Did they return the skins to you?

A. A part of them. The first lot they returned was thirty-seven dozen and ten skins.

Q. Had those been treated by them in any manner?

(Objected to be plaintiff's counsel.)

A. Yes, sir.

Q. What was the condition of the 37 dozen and ten skins when returned to you?

(Objected to by plaintiff's counsel.)

A. They were not soft enough for my use.

Q. Were they suitable for what is called and known as dog-skin gloves?

(Objected to by plaintiff's counsel.)

A. They were not.

Q. What next, if anything, occurred between N. C. Russell and you in regard to these skins, or the dressing of them, by N. C. Russell & Co.? State all that did occur.

(Objected to by plaintiff's counsel.)

A. I met Mr. Russell on the street a few days afterward; I told him I did not like the skins, the way they were fixed; that they were about as hard as they were when I took them there. He told me, if there were any I could not use among them, to sort them out, and bring the rest back, and they would do them over. I sorted out a few of them, and

sent the rest back, but cannot tell how many I did send back.
187 In the mean time he dressed a lot more of them. I think the whole they put through amounted to seventy-seven dozen and ten skins, may be a few more or a few less; I sent my brother or brother-in-law, but think my brother, to go up there and get the skins. Mr. Fulton, a partner of N. C. Russell & Co., told my brother that the skins were there, and if they did not suit us, to take them to Dodge and get them fixed, for he could not make them any better. My brother's name who went after the skins is John H. Bentley. That is all about the skins.

Q. Did your bring the skins from Russell & Co.; and, if so, how many, and what was the condition of the skins then?

(Objected to by plaintiff's counsel.)

A. I don't know exactly how many he brought. He brought twenty-two dozen that had not been dressed. Some came from Russell's in small lots. I cannot tell how many were brought home at that time that were dressed. The condition of the skins that were dressed was no better than before.

Q. State the condition of these bark-tanned skins, dressed by N. C. Russell & Co., after they had completed the dressing, and when the skins were returned to you.

(Objected to by plaintiff's counsel.)

A. The skins, when they were returned to me, were damp and felt soft, but after they laid a little while and dried out they were stiff as a board.

Q. Were these skins, dressed by Russell & Co., when returned to you, suitable for gloves?

(Objected to by plaintiff's counsel.)

A. They were not, because they were stiff and glazy.

Q. Did you send any of these skins to Dodge for treatment except the twenty-two dozen returned by Russell and Co. without being dressed; and, if so, what of them did you send to him?

(Objected to by plaintiff's counsel.)

A. My partner selected out a dozen of the hardest skins he could find among the lot which Russell & Co. had dressed, and took them to Mr. Dodge, the defendant, to see if he could make them soft.

Q. Did Dodge treat this dozen, also the twenty-two dozen returned from Russell's without being dressed?

(Objected to by plaintiff's counsel.)

A. Yes; he treated the whole twenty-three dozen, but Dodge treated this one dozen before he treated the other twenty-two dozen.

Q. State the coddition of the twenty-three dozen skins treated by Dodge, after treatment by him.

(Objected to by plaintiff's counsel.)

A. The skins were very plump, nice, soft, and were suitable for dog-skin gloves.

188 Were you present at the conversation between Mr. Fulton, Mr. Russell's partner, and your brother, spoken of by you?

A. I was not. I was only stating what my brother told me that Fulton said.

(Plaintiff's counsel here moves to strike out that portion of the evidence testified to from hearsay.)

On his cross-examination, by plaintiff's counsel, the witness further testified as follows:

Q. Why did you attempt to swear on your direct examination, as of your own knowledge, as to matters and conversations that occurred between parties when you were not present?

(Objected to by defendants' counsel, on the ground that the question assumes he did so attempt, which we deny.)

A. I supposed it was understood that I was swearing as to what my brother had told me that Fulton had told him.

Q. Did you state on your direct examination that you were testifying to what had been reported to you by your brother?

A. I so understood it.

(This answer was objected to by plaintiff's counsel as not responsive to the question, but was insisted upon on the part of the defendants' counsel.)

Q. The same question is repeated.

A. I have answered it as near as I can. I understood that I so stated.

Q. Do you mean now to testify that while on your direct examination you stated what occurred between your brother and Fulton, that you then stated that you were giving what your brother had reported to you of that interview?

A. I don't know whether I so stated or not.

Q. Did you testify on your direct examination that it was either your brother or brother-in-law that had the interview with Fulton; that you was not quite certain, but thought it was your brother?

A. Yes.

Q. Can you swear now, positively, which it was?

A. I would not swear positively.

Q. Have you ever paid Russell & Fulton for what they did on the skins?

(Objected to by defendants' counsel.)

A. I have not.

Q. You don't mean to, do you?

(Objected to by defendants' counsel.)

A. Well, I don't know whether I shall or not. If I am obliged to, I shall; maybe I shall pay for it if I am not obliged to.

Q. When the skins were taken to Dodge, was he informed they had been to Russell & Co.?

A. I don't know.

Q. Who took them to Dodge's?

A. I think my brother.

Q. Did you not swear, on your direct, it was your partner?

A. I did not. I swore he took one dozen there.

Q. Was Mr. Dodge informed that the one dozen had been to Russell & Fulton's?

A. Yes, sir.

189 Q. Did you ever talk with Fulton on the subject of these skins?

A. I don't think I ever did.

Q. Will you swear you did not talk with Fulton on the subject?

A. I will, to the best of my knowledge.

Q. Will you swear you did not make a bargain with Fulton about dressing those skins?

A. I will, sir.

Q. How many skins in all were taken to Russell & Fulton?

A. Supposed to be one hundred dozen.

Q. Who took them there?

A. I took them there myself.

Q. Who was there when you took them there?

A. Charlie Russell, Mr. Russell's son, and another fellow, I don't know who he was.

Q. How many of that one hundred dozen did they dress in all?

A. I think 77 dozen and ten, as nearly as I can remember.
Q. How many of that 77 dozen and ten were returned to them by you
A. I think there were either 28 or 29 dozen; something near that.
Q. Did you cut the balance up into gloves?
A. I did.
Q. Do you know of your own knowledge that those that were returned were redressed by Russell & Fulton?
A. I do not.
Q. Were the 22 dozen you sent to Dodge a part of the 77 dozen and ten you spoke of?
A. They were not.
Q. At the time you sent these skins to Russell & Fulton, had you ever seen leather softened or prepared by them for mittens and gloves or gloves of their manufacture made of such leather?
A. I had never seen any leather of their finish, but had seen gloves of their make, but did not take much notice of them.
Q. Have you since seen their gloves or leather?
A. I have since seen some of their leather in their shop.
Q. How would the leather they dressed for you compare with their leather you saw in their shop, and the gloves of their manufacture which you saw?
A. I think their gloves were ahead of mine and the leather softer.
Q. Was their leather considerably softer and better than that they prepared for you?
A. It was.
Q. Was it suitable for what are called dog-skin gloves?
A. I should think it was.
Q. When did they prepare this leather for you?
A. It was all within a year; I never took him but one lot of skins; that was this one hundred dozen.
Q. When did you first communicate the fact of this bad job to the defendant or Isaac V. Place?
A. I think I talked with Mr. Dodge about it while he was dressing those 22 dozen skins, but never talked with Mr. Place about it.
Q. Were these skins which you sent to Dodge's shaved before they were returned to you?
A. They were not.
Q. Were they shaved before you sent them there?
A. No, sir.
Q. Do you mean to be understood as swearing positively that when you took the skins to Russell & Fulton's shop, Fulton was not present, and that you never had any conversation with Fulton on the subject of dressing these skins?
190 A. I have no recollection that any one was present but the Russell boy and another boy; I do not mean to swear positively that Fulton was not present.
Q. Do you mean to swear positively that you had no conversation with Fulton on the subject of dressing the skins prior to taking them to their shop?
A. No, sir.

On his redirect examination by defendants' counsel the witness further testified as follows:

Q. You spoke of your men having cut a portion of these skins treated by Russell. Please state whether they were cut with your knowledge, that is, the skins not sent to Dodge.

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Where did you procure the skins sent to Russell for treatment?

A. I think of Geo. H. Parker, of Detroit.

Q. Was he at that time a dealer in that kind of skins?

A. Yes, sir.

Q. Are you able to state whether these skins had been shaved before they were dressed by Russell?

A. They had not been shaved.

Q. Did you cut any of them yourself?

A. No, sir.

Q. Did you know the condition of the skins cut by your men before they cut them?

A. I did not.

On his further cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

Q. Had they all been cut by your men before you knew their condition; and, if not, how many of them had been?

A. They had not all been cut; might have been five or six dozen cut, more or less.

Q. While they were cutting those five or six dozen, were you about your shop where they were at work, and did you know what they were doing?

A. I think I was there in the morning and gave them their tools, and told them what to do; I might not have been there all through the day.

Q. Did you know they were cutting the leather dressed by Russell?

A. Yes, sir.

Q. After the cutting of the five or six dozen, did you or your men, with your knowledge, cut up the balance of the skins dressed by Russell into gloves?

A. Yes, sir; we cut them up.

Q. Into what kind of gloves were they cut and made?

A. Into gauntlets.

Q. Were the gloves so made sold by you in market?

A. Yes, sir.

Q. Into what kind of gloves were the five or six dozen skins cut by your men, as you have stated, cut and made?

A. Into *guan*tlets.

Q. Was this by your direction?

A. Yes, sir.

Q. After the skins were returned to you by Russell & Fulton, what, if anything, was done to them by you before cutting? State particularly.

191 A. I took the skins to John King, and had the flesh taken off on the bucktail; then I took them home, had them staked and cut.

Q. Were they not staked before bucktailing by King?

A. I think some of them were.

Q. Then that would make two processes of staking, and one of bucktailing or finishing, after coming from Russell's, and before cutting, would it not?

A. Yes, sir.

Q. Where was the first staking done?

A. In our shop.

On his further redirect examination by defendants' counsel the witness further testified as follows, to wit:

Q. What was the quality of those gloves made of the skins dressed by Russell?

A. They were hard and tight.

Q. How did the prices obtained by you for them compare with those obtained for gloves made from the skins dressed by Dodge, spoken of by you, or with others of like quality as those dressed by Dodge?

(Objected to by plaintiff's counsel.)

A. There was from one to two dollars' difference per dozen in favor of Mr. Dodge's.

On his further recross-examination by the plaintiff's counsel the witness further testified as follows, to wit:

Q. To whom did you sell the goods made of the skins dressed by Russell and Fulton?

A. Morris Kohn; Gray, Kimbrough & Co.; we consigned some to N. H. North; that is all I can remember.

Q. What price or prices per dozen did you get for them?

A. Seven dollars, and seven and a half, per dozen.

Q. To whom did you sell the goods made of skins that Dodge prepared?

A. I sold some to Gray, Kimbrough & Co., and some to U. R. Jeffers, W. M. Blowers; that is all think of now.

Q. What did you get per dozen for these?

A. Eight and a half and nine dollars.

Q. Do you mean to say you sold none of them for less than eight and a half?

A. No, sir; are always some culls which we sell for less.

Q. What was the lowest price you got for any of these?

A. Seven dollars to seven and a half; as I put them right in with those dressed by Russell.

Q. How many dozen, or what proportion of them, did you sell for seven or seven and a half?

A. Might have been five dozen, or it might have been less, or it might have been more.

Q. Were the goods manufactured from the Russell dressing and the Dodge dressing the same or different style of gloves?

A. The same style.

Q. What was the average market-price of that style of gloves at that time in Gloversville?

A. I am satisfied from what I heard that the market-price of No. one *guantlets* was nine dollars per dozen.

Q. Then the style of gloves you made of this leather was what
192 you call No. one gauntlets?

A. Some of them number ones, and some number twos.

Q. What was the average price of number two *guantlets* at Gloversville at that time?

A. As far as I know of, from seven to seven and a half.

Q. Do you know, or are you willing to swear you know, the average price of either No. one or number two of that style of goods at Gloversville?

A. I am not willing to swear that do I know the average price.

NATHANIEL BENTLEY.

Taken, subscribed, and sworn this 19th day of October, 1872, before me.

J. WENDELL,
Special Examiner.

JOHN H. BENTLEY, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

I am 23 years of age; I reside in Gloversville; I have resided in Gloversville; I have resided there five years; my business is glove-cutting; I have been so engaged ever since I have been there. I worked last year for my brother Nathaniel and his partner in Gloversville, cutting gloves. The firm-name was George W. Jeffers & Co. I remember a lot of bark-tanned sheep and lamb skins, that were sent by George W. Jeffers & Co. to Mr. Russell last year to be dressed; I cannot say how many.

Q. Did you take any of those skins from Mr. Russell's shop to the shop of George W. Jeffers & Co.?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. State, if you can, about how many.

(Objected to by plaintiff's counsel.)

A. About twenty-one dozen.

Q. Had they been dressed by Russell at that time?

(Objected to by plaintiff's counsel.)

A. No, sir; they had not been by him.

Q. Were they then in the same condition as when sent to Russell—those you brought away?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Were any of the skins sent to Russell to be dressed by Jeffers & Co. dressed by him?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Did you see them after they were dressed by Russell?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. State their condition then?

(Objected to by plaintiff's counsel.)

193 A. They were not dressed as they ought to have been; were very stiff and hard; no give to them.

Q. Were they suitable for what are called dog-skin gloves?

(Objected to by plaintiff's counsel.)

A. No, sir.

Q. Did Messrs. Dodge, the defendants, dress any of the bark-tanned skins which you brought from Russell's? If so, how many?

(Objected to by plaintiff's counsel.)

A. Yes, sir; I think twenty-one dozen, as nigh as we could count them.

Q. What kind of leather did they make out of those skins?

(Objected to by plaintiff's counsel.)

A. Good leather.

Q. Suitable for what are called dog-skin gloves?

(Objected to by plaintiff's counsel.)

A. To the best of my judgment they were; they were far ahead of Mr. Russell's.

Q. Who did you see at Russell's at the time you took the skins away from there?

(Objected to by plaintiff's counsel.)

A. I saw Mr. Russell's partner, John Fulton.

Q. State, if you know, why these skins were taken away from Russell's.

(Objected to by plaintiff's counsel.)

A. Because they were not properly dressed to suit Geo. W. Jeffers & Co.

Q. When you say they were taken away because they were not properly dressed to suit George W. Jeffers & Co., what skins do you refer to?

(Objected to by plaintiff's counsel.)

A. I refer to these that Mr. Russell & Co. dressed and brought back to the shop of George W. Jeffers & Co.

Q. What I desire to know is, why the skins that you took from Russell's shop, that had not been dressed by him, were taken away from his shop? State, if you know.

(Objected to by plaintiff's counsel.)

A. Because he did not dress the others to suit them.

On his cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Were the skins dressed by Russell and returned to G. W. Jeffers & Co. made up by them into what are called dog-skin gloves?

A. Yes, sir.

Q. You say that Dodge dressed twenty-one dozen skins that were brought from Russell's, as near as you could count them. Who counted them or tried to count them?

A. I and John Fulton counted them as nigh as we could, as there were some things in the way so we could not get at them very well.

Q. Did you take these skins to Dodge's?

A. Yes, sir.

Q. Did you inform Dodge where they came from?

A. I did not inform Mr. Dodge, but did inform his man to whom
194 I delivered them.

Q. In speaking of these skins that Russell dressed, do you refer to the same lot testified to by Nathaniel Bentley, the last witness?

A. Yes, sir.

JOHN H. BENTLEY.

Taken, subscribed, and sworn this 19th day of October, 1872, before me.

J. WENDELL,
Special Examiner.

SIDNEY S. PLUMMER, a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

I am 45 years of age. I reside in Gloversville; have resided there all my life-time. My business is manufacturing gloves and mittens, and have been so engaged for 25 years in Gloversville.

Q. When first, if ever, did you know of the use of fat liquor upon bark-tanned sheep and lamb skins, to prepare such skins for gloves?

A. I should say twenty years ago; I first saw it applied at what was called Mr. Burr's skin-mill at Gloversville, that being the only mill there at that time. Since that time I have seen it applied several times to bark-tanned sheep and lamb skins; was applied cold, without being heated. It had the effect to soften the leather and plump it; that is what it was used for. I never was successful in getting the squeak all out of the leather with it.

Q. How long have you known that fat liquor applied to bark-tanned sheep and lamb skins would make them soft, plump, and pliable?

(Objected to by plaintiff's counsel.)

A. Ever since I used it, or saw it used, for twenty years.

Q. State whether or not bark-tanned sheep and lamb skins, after being

treated with fat liquor so as to make them soft, plump, and pliable, are suitable for what are called dog-skin gloves.

A. Yes, sir.

Q. If you have yourself, at any time, treated bark-tanned sheep and lamb skins with fat liquor, to prepare them for gloves, please state when you first so treated such skins, and how?

A. Twenty years ago, and I think longer; can't say just how long. I dipped them into a tub containing fat liquor, left them in till we thought they were soaked through, when we hung them out and dried them, then put them back in the fat liquor again, then dried them down again, then I think we *then* staked them out.

Q. State whether or not you have since that time treated bark-tanned sheep or lamb skins with fat liquor for the purpose of making
195 them soft, plump, and pliable, and preparing them for the manufacture of gloves; and, if so, how frequently?

Q. (Objected to by plaintiff's counsel.)

A. Yes, sir, I have; I could not say how many times, but should say I had tried it five during the 20 years, and prior to 1869.

Q. What effect was produced upon the skins by the application of fat liquor at these several times?

A. It made them softer, and what we term plump.

Q. Did it make them sufficiently soft and plump to fit them for what are called dog-skin gloves?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Did you treat these several lots of bark-tanned sheep and lamb skins mentioned by you with fat liquor alone, or with fat liquor and some other ingredient or ingredients mixed with it?

A. With fat liquor alone.

Q. State whether or not, on these various occasions, you treated the skins with fat liquor in the same manner you have stated, or otherwise?

A. I treated them differently.

Q. How different? Please state.

A. Sometimes by putting them into stocks, pouring the fat liquor on them while the stocks were in motion; at other times by dipping them, as I have heretofore stated.

Q. State, if you know, whether or not the effect produced upon the skin was substantially the same in each instance?

A. It was.

Q. Did you, at any time, and if so, when, deliver to the plaintiff, Mr. N. C. Russell & Co., a quantity of bark-tanned sheep or lamb skins to be treated by him and made soft and suitable for gloves, and did they treat them for you?

(Objected to by plaintiff's counsel.)

A. I did, during the summer of 1871, and they treated them for me. I think there were twenty-five dozen. They were mixed, both sheep and lamb skins.

Q. What quality of skins were they?

(Objected to by plaintiff's counsel.)

A. They were a second quality of skins.

Q. State the condition of the skins after treatment by Russell & Co., and the quality of leather made.

(Objected to by plaintiff's counsel.)

A. The leather was what we term flat and tight.

Q. State whether or not the leather was suitable for what are called dog-skin gloves.

(Objected to by plaintiff's counsel.)

A. They would make what we call dog-skin gloves, but would not be what we call number one glove.

Q. Why would not this leather dressed by Russell & Co. make number one gloves?

(Objected to by plaintiff's counsel.)

A. Because it was not soft enough, nor pliable enough.

196 Q. Did you deliver to the defendants, Samuel Dodge & Son, about the same time or shortly thereafter, a quantity of bark-tanned sheep and lamb skins from the same lot of skins, and of the same quality, as those dressed for you by Russell & Co. to be dressed by Dodge & Son?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. State the condition and the quality of the leather made them, by Dodge & Son.

(Objected to by plaintiff's counsel.)

A. The skin was soft and the leather plump and lively.

Q. Were they suitable for what are called and known in Gloversville as dog-skin gloves?

(Objected to by plaintiff's counsel.)

A. Did you have any conversation with Mr. Russell in regard to these skins dressed by Russell & Co. for you about the time they were dressed?

(Objected to by plaintiff's counsel.)

A. I can't say that I did.

Q. Please state the number of skins dressed by Dodge & Son for you, as stated by you.

(Objected to by plaintiff's counsel.)

A. Twenty-five dozen.

Q. Please state the relative value per dozen skins of those dressed by N. C. Russell & Co. and those dressed by Samuel Dodge & Son, after they had been treated and dressed by them respectively.

(Objected to by plaintiff's counsel.)

A. The skins dressed by Dodge & Son I think were worth the most, the price of dressing them, which I think was two dollar' per dozen.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Please state when, as near as you can recollect, and where it was, that you treated the first lot of bark-tanned skins with fat liquor, spoken of on your direct examination.

A. Twenty years ago, or more, at Mr. Burr's mill.

Q. How many did you treat at that time?

A. About a dozen skins; maybe not as many.

Q. When and where was the next occasion on which you treated bark-tanned skins with fat liquor; and how many did you then treat?

A. Either at the same place, or at what was called "the steam-mill." I did not then treat exceeding one dozen. This was a year or more after the other lot was treated.

Q. When and where did you treat the next lot, and how many did you then treat?

A. The next lot I remember treating was at Charles Mills' mill; I

should think it was three years after I had treated the lot at the steam mill. I should say were not over a dozen.

Q. When and where was the next lot treated by you, and of how many did that lot consist?

A. At what was called "McNab's Mill," in Glovershire. I then treated five dozen. This was either in 1867 or 1868.

Q. When and where was the next, if any, and how many then?

A. That at McNab's mill was my last experiment.

Q. In all these instances, if I understand you correctly, you applied the liquor in a cold state?

A. I did.

Q. And you did not, in any of these instances, succeed in getting the squeak out of the leather so treated?

A. Not entirely.

Q. During the period covered by these various experiments, did you manufacture gloves and mittens from bark-tanned sheep and lamb skins in the bark-tanned state?

(Objected to by defendant's counsel.)

A. Not then.

Q. Were these various experiments spoken of by you with fat liquor made for yourself or for other people? And, if for others, please state for whom.

A. The first lot of skins I treated were for Alanson Burr. The next lot belonged to Alanson Hosmer. The next lot of skins belonged to D. C. Mills; the next lot belonged to me.

Q. Were Burr, Hosmer, and Mills manufacturers of mittens and gloves?

A. Yes, sir.

Q. Have you seen leather made by Russell, the plaintiff, from bark-tanned sheep and lamb skins since 1869, other than that dressed by him or his firm for you, mentioned on your direct examination?

A. I have.

Q. Have you also seen gloves of his manufacture made of such leather?

A. I have.

Q. How would the leather produced by your experiments, as you have described them, compare in quality and fitness for gloves with such leather of Russell's?

A. It would be inferior. It was inferior to that of Russell's.

Q. Was it considerably inferior?

A. It was.

Q. How would the other leather you have seen of Russell's, as stated, compare with that he dressed for you?

A. It was a great deal better.

Q. When you stated in substance on your direct examination that you had known for twenty years that fat liquor applied to bark-tanned sheep and lamb skins would make them soft, plump, and pliable, did you refer to the use and application of fat liquor as described in your experiments?

A. Yes, sir.

Q. Is not the leather produced by Russell more suitable for what are called "dog-skin gloves," and does it not make a decidedly better article of gloves than the leather produced by your experiment?

It is and does.

Q. Of your own knowledge, do you know how Mr. Dodge treated the

skins he dressed for you, spoken of by you on your direct examination? No, sir.

Q. What did you pay Mr. Dodge per dozen for what he dressed for you?

198 A. I am not able to state, but paid him either one and a half or two dollars per dozen. I have paid him from twelve shillings to twenty shillings per dozen, including the shaving of the heavy skins.

On his redirect examination by defendant's counsel, the witness further testified as follows:

Q. How did the leather you treated for Burr, Hosmer, Mills, and for yourself, compare in softness, plumpness, and pliability with that Mr. Russell treated for you, as you have stated?

A. Mr. Russell's leather was the best.

Q. What kind of skins were those you treated for Burr, Hosmer, Mills, and yourself; that is, whether they were sheep or lamb skins, and what their quality?

A. My impression is that those I treated for Burr, Hosmer, and Mills were sheep-skins, and those I treated for myself I think were sheep and lamb mixed. I should say they were second quality of skins.

Q. State whether those referred to treated by Mr. Russell other than the lot treated for you were sheep or lamb skins, and what their quality.

A. I should call them lamb-skins, what I saw, and as to quality I should call them number one skins.

Q. When did you first learn and know the effect which fat liquor would produce upon bark-tanned sheep and lamb skins?

(Objected to by plaintiff's counsel.)

A. I cannot exactly tell the time, but would say twenty years ago.

Q. What do you mean by the term "experiments" when relating to the treatment of skins for Burr, Hosmer, Mills, and yourself, as stated on your cross-examination?

(Objected to by plaintiff's counsel.)

A. I mean I was trying to see if I could make bark-tanned skins soft by fat liquor.

Q. What kind of skins were those Russell treated for you?

A. They were sheep and lamb, and of second quality.

Q. When, on your redirect examination, you speak of first learning and knowing the effect of fat liquor upon bark-tanned skins, you refer to your knowledge derived from your experiments before spoken of?

(Objected to by defendants' counsel.)

A. I do.

SIDNEY S. PLUMMER.

Taken, subscribed, and sworn this 21st day of October, 1872, before me.

J. WENDELL,
Special Examiner.

ISAAC V. PLACE, a witness produced, sworn, and examined by and in behalf of the defendants, testified as follows:

199 I reside in Gloversville, Fulton County; have resided there constantly since 1845 and for two or three years before that, part of the time. I will be 55 years of age in December next. My business is dressing leather and manufacturing gloves and mittens. I mean dressing leather for mittens and gloves. I commenced the business of

dressing leather for mittens and gloves in the year 1833. I then operated a skin-mill at what is called West Bush, in Johnstown, Fulton County. I worked at dressing skins three years before I commenced manufacturing mittens and gloves for myself. I have ever since that time been engaged as a manufacturer of mittens and gloves, and of dressing of leather for that use in Gloversville and vicinity, in the town of Johnstown, in Fulton County. I have done a large and extensive business in manufacturing leather and manufacturing gloves and mittens during all this time. I have used fat liquor in the dressing of skins; first in 1835. At that time what I did dress with fat liquor I dressed them entirely with fat liquor for mittens and gloves. I dressed deer-skins that year with fat liquor. I used fat liquor in the dressing of skins in 1835, and in every year from that time to 1850, personally, myself, and since that time I have used it, by men in my employ, every year in my business.

Q. From your experience in the use of fat liquor upon skins are you able to state the effect produced by fat liquor applied to skins for mitten and glove leather; and, if so, what is the effect?

(Objected to by plaintiff's counsel.)

A. I am. It will tan raw skins suitable for gloves and render skins that are hard soft and suitable for gloves, and if applied to bark-tanned skins, it makes them soft and fit for gloves and mittens.

Q. For how long a time have you understood the effect that fat liquor would produce upon mitten and glove leather, including bark-tanned sheep and lamb skins?

(Objected to by plaintiff's counsel.)

A. Thirty-nine years this season that I learned the use of fat liquor to soften glove-leather. I think we used fat liquor soon after on bark-tanned sheep and lamb skins, but cannot state any time definitely before 1856.

Q. State what you done in 1856.

A. I made quite a quantity of gloves and mittens from bark-tanned sheep and lamb skins in that year. I treated the sheep and lamb skins with fat liquor. I think in that year we applied the fat liquor with the sponge. I am not able to state that we done it in any other way that year. It made the skins soft and suitable for mittens and gloves, and we made them into mittens and gloves; made about 140 dozen; may have made more. I don't know the condition of the liquor, but think we applied it cold. We applied it cold in summer and warm in the winter; don't know whether this was the winter or summer. We next used fat liquor in 1857 in the treatment of bark-tanned sheep and lamb skins to prepare them for mittens and gloves; used it warm; made something over two hundred dozen that year of that kind of leather. The skins were dipped in the liquor warm and left in a few minutes; were then taken out and dried; then were staked and cut into gloves and mittens. We next treated bark-tanned skins in fat liquor in 1858; should think not over twenty-five dozen; don't know whether we warmed the liquor or not. I cannot tell positively how we applied it, but think with the sponge; but may have applied it both ways. We done it every year, but cannot fix any positive time after 1858 till we come to 1862. In 1862 we made between 300 and 400 dozen gloves and mittens—mostly gloves—of bark-tanned sheep and lamb skins treated with fat liquor. We applied the fat liquor with a sponge; think we warmed it; am not positive. I cannot fix the date since, but think we have done it every year since 1862; that is, treated bark-tanned sheep and lamb skins with fat liquor. We applied both ways, by dipping and by sponge, and applied cold and warm. The uniform effect of the application of fat

liquor to bark-tanned sheep and lamb skins is to make them soft and pliable, suitable for mittens and gloves; and it always removes the squeak when applied in suitable quantities. We made the bark-tanned skins so treated into mittens and gloves and sold them about the country. We never designed to heat the fat liquor more than blood-warm, or thereabouts. The bark-tanned treated in my early using were not shaved; have used shaved skins for four or five years. The bark-tanned skins treated by us with fat liquor were made suitable for what are termed "dog-skins" gloves. We did not use any other ingredient but fat liquor. The effect of fat liquor applied to the skin is the same whether applied warm or cold.

Q. State why you sometimes used the fat liquor warm, and sometimes cold, in bark-tanned sheep and lamb skins.

(Objected to by plaintiff's counsel.)

A. It works quicker warm than cold, especially in winter. In the summer time it is warm enough without warming. I know Henry Krause. He was in our employ in 1856 and 1857, and I think in 1858, but am not sure.

Q. State the use of fat liquor upon skins for mittens and gloves other than bark-tanned sheep and lamb skins, and its effect.

(Objected to by plaintiff's counsel.)

201 A. It is used for softening all kinds of skins I have ever made gloves of. It makes them soft and more suitable for gloves and mittens. It will also tan any kind of skin we make gloves of, when properly applied.

Q. For how many years has it been so used to your knowledge, and for how long a time have you known the effect produced by its application, as stated in your last answer?

(Objected to by plaintiff's counsel.)

A. Thirty-nine years; and I have known the effect produced on most of these kinds of leather for that length of time.

Q. In the treatment of the various kinds of skins, including bark-tanned sheep and lamb skins used in the manufacture of gloves and mittens, do some skins, apparently of the same kind and of the same heft, require different treatment; and, if so, state the cause, if you know.

A. They do require different treatment. Every lot of skins that I have ever handled vary, according to the season of the year the animal is killed. In one season of the year the hide of all animals is thick and tight; at other seasons of the year it is thin and poor. Another reason why it may differ is, the animal is fat and the skin healthy; another season it may be poor and unhealthy. All these conditions make a different class of leather, when the leather is produced.

Q. Can you tell a bark-tanned sheep or lamb skin treated with fat liquor when you see it?

A. I can.

Q. If you know of N. C. Russell, the plaintiff, treating bark-tanned sheep or lamb skins with fat liquor, state when you first knew of his treating such skins.

A. I cannot say that I personally know of his treating bark-tanned sheep or lamb skins with fat liquor.

Q. Do you know whether or not bark-tanned sheep and lamb skins treated with fat liquor have been used by others than yourself, in the manufacture of mittens and gloves in Gloversville; and, if so, for how long a time?

(Objected to by plaintiff's counsel.)

A. They have been used extensively in Gloversville for more than twenty years. In 1839, and I think in 1840, 1841, and 1842, there were used a large quantity of bark-tanned sheep and lamb skins generally treated with fat liquor, made into mittens and gloves, at Gloversville.

Q. State whether or not, to your knowledge, soft, pliable leather, made from bark-tanned sheep and lamb skins has been used for the manufacture of gloves by glove manufacturers in Gloversville; and, if so, for how long.

(Objected to by plaintiff's counsel.)

A. It has, and has been so used for more than twenty-five years.

202 Q. Do you remember whether or not Henry E. Krause, about the year 1857, while in your employ, treated bark-tanned sheep and lamb skins with fat liquor?

A. He did, both in 1856 and 1857.

Q. State whether not you have recently examined your books by way of refreshing your recollection as to the dressing of bark-tanned sheep and lamb skins with fat liquor for the manufacture of gloves and mittens.

(Objected to by plaintiff's counsel.)

A. I have.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Are you the Isaac V. Place who was sued, with your brother John W. Place, by this plaintiff for an infringement of his patent, and in which suit a judgment was obtained against you?

A. I am.

Q. Was that suit tried in Albany in October, 1870; and were you examined as a witness in behalf of the defendants on that trial?

A. Yes; it was tried in Albany in October, 1870, and I was so examined as a witness.

Q. Was there at the same time a suit pending in this court in favor of this plaintiff against Albert Klein for an infringement of plaintiff's patent, which suit was subsequently tried at Utica in March, 1871?

A. I am not able to state whether there was such a suit then pending, but such a suit was tried in Utica in March, 1871.

Q. Do you mean to be understood as testifying that you do not know that that suit was pending at the time of the trial of yours in Albany?

A. I mean to testify that I do not remember that the suit was then pending, but think it was.

Q. Was Mr. Klein at Albany, in attendance upon this court at the term during the trial of your suit?

A. He was.

Q. For what purpose?

A. I am not able to say for what purpose.

Q. Was he there as a witness in your case?

A. I think not. I don't remember that he was.

Q. Did Klein then, and does he still, reside in Gloversville?

A. He did then and does still reside in Gloversville.

Q. Did you not know, before the trial of your suit, that Klein was sued by Mr. Russell, and did you not have conversation with him in relation to the matter?

(Objected to by defendant's counsel.)

A. I must have known it, if Klein was sued before, but I don't now remember. I did have conversation with him in relation to the matter,

but whether it was before this trial at Albany I do not now remember. I had several conversations with him.

Q. Did it come to your knowledge, after the trial of your suit, that Klein was talking or thinking of settling his suit with Russell?

(Objected to by defendants' counsel.)

203 A. It did come to my knowledge, and I think it was after that suit, but I do not distinctly remember when it came to my knowledge.

Q. On its coming to your knowledge, as you have stated, did you see Klein, and advise him not to settle?

(Objected to by defendants' counsel.)

A. I did.

Q. Did you propose to him to carry on the defence of his suit at your own expense, either in whole or in part?

(Objected to by defendants' counsel.)

A. I think not.

Q. Will you swear that you did not?

(Objected to by defendants' counsel.)

A. I will not swear that I did not.

Q. Did you confer with him and others in reference to joining together or raising a common fund to defend suits for infringement of Russell's patent?

(Objected to by defendants' counsel.)

A. I think I never conferred with him about raising a common fund to defend suits, but it comes to my mind now that Klein and I agreed to defend these suits together, and share and share alike in costs.

Q. To what suits did this arrangement refer?

(Objected to by defendants' counsel.)

A. It referred to the suits against me and J. W. Place and the one against Klein.

Q. Did it include the suit now pending against you?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Did you not, either personally or through your attorney or otherwise, employ counsel to try Klein's suit at Utica?

(Objected to by defendants' counsel.)

A. I did.

Q. Did you not subpœna and pay, or cause to be subpœn'ed and paid, witnesses for the defence on that trial?

(Objected to by defendants' counsel.)

A. I did.

Q. Were you not personally present at the trial of that suit, and did you not have with you as witnesses for the defence your brother, John W. Place, and your former employee, Henry E. Krause, and others?

(Objected to by defendants' counsel.)

A. I was personally present, and I did have the persons named there as witnesses.

Q. Did you cause that case to be removed to the Supreme Court by writ of error, and is it being prosecuted by counsel employed by you?

(Objected to by defendants' counsel.)

A. I did, and it is.

Q. Since you were sued by Russell, have you conferred with others than Klein, who are engaged in the manufacture of mittens and

204 gloves, or the dressing of leather, in Gloversville, in relation to raising funds or joining to defend against Russell's patent?

(Objected to by defendants' counsel.)

A. I have conferred with some few parties, right away after I was sued, in relation to raising funds or joining to defend against Russell's patent.

Q. Did you prepare, or cause to be prepared, a subscription-paper for that purpose, and did you circulate such a paper for signatures?

(Objected to by defendants' counsel.)

A. I did prepare such a paper and circulated it myself.

Q. Was this after the trial of your suit in Albany?

(Objected to by defendants' counsel.)

A. I don't distinctly remember whether before or afterward.

Q. Did your name head the paper?

(Objected to by defendants' counsel.)

A. It did.

Q. To how many different persons did you present it for their signatures and how many signed it?

(Objected to by defendants' counsel.)

A. I presented it to three or four persons, and think one signed it, but am not positive.

Q. Who do you think signed it?

(Objected to by defendant'.)

A. I think Samuel Dodge.

Q. Samuel Dodge, senior, one of these defendants?

(Objected to by defendant'.)

A. Yes, sir.

Q. Is there a second suit pending in favor of Russell against you and your brother, John W. Place, for an infringement of his patent, since the commencement of the other suit referred to, and for an accounting?

(Objected to by defendant'.)

A. There is.

Q. Were the pending suit against you, and the one against Dodges in which you are now testifying, commenced about the same time?

(Objected to by defendants' counsel.)

A. I think they were, the same day.

Q. How soon after the commencement of these suits did you and these defendants, or either of them, confer, if at all, in regard to the defence?

(Objected to by defendant'.)

A. We had a conference shortly after the commencement of the suit, but cannot tell how soon.

Q. Was it not the same day the suits were commenced, or the next?

(Objected to by defendants' counsel.)

A. It might have been the same day or the next; I don't remember.

Q. When the first papers were served on you by the marshall, did you receive a request through him, from defendant Dodge, to go and see him, Dodge, on the subject of the suits, and did you go?

205 (Objected to by defendants' counsel.)

A. I think the marshall told me Mr. Dodge wanted to see me, and I went to see him.

Q. Have you and these defendants, or either of them, since been in frequent consultation on the subject?

A. We have.

Q. Have you, either personally or otherwise, employed counsel in the suit in which you are now testifying?

A. I can't answer that question without explanation. I can't say that I have.

Q. Can you say that you have not?
A. No, sir.
Q. Are the same attorneys and counsel employed in both cases?
A. They are.
Q. Since we began to take evidence in this case, have you paid or advanced money for the payment of counsel and other expenses of the suit?
A. I have.
Q. Have you subpœn'ed, or caused to be subpœn'ed, and paid witnesses for the defence?
A. I have not.
Q. Have you been in attendance on the examinations before the commissioner most of the 24 or 25 days already employed in taking evidence in this case?
A. I have been here part of the time; I should think not most of the time.
Q. Will you testify that you have not been in attendance on a majority of the days, more or less each day?
A. No, sir; I have not kept an exact account.
Q. How far do you reside from the place of taking testimony?
A. It is called between three and four miles.
Q. Have you been engaged in looking up and conversing with witnesses and consulting with counsel for the defence?
A. I have, some part of the time.
Q. Have you conveyed or furnished conveyance for witnesses for the defence to and from the place of taking testimony?
A. I have.
Q. Was the use of fat liquor by you from 1833 down to 1856, referred to in your direct examination, for tanning or dressing skins from the raw?
A. It was for tanning skins from the raw, and also for making soft all kind of skins used for glove-leather that had been dressed.
Q. What kind of skins did you dress prior to 1856? State all you can remember.
A. Deer-skins, sheep-skins, fatney hides, coon-skins, panther-skins, goat-skins, and bark-tanned sheep and lamb skins, and woodchuck-skins; these are all I remember.
Q. Did you not state in substance, on your direct examination, that you could not state positively or definitely any bark-tanned sheep or lamb skin treated by you with fat liquor prior to 1856?
A. I think I stated I could not fix the date prior to 1856.
(This answer is objected to by plaintiff's counsel as not responsive to the question, but insisted on by counsel for defendant'.)
Q. Question repeated.
A. I don't know but I did.
Q. Do you know whether you did or did not?
206 A. I don't know, but I think I did not.
Q. Can you now speak positively of any lot of bark-tanned sheep or lamb skins treated by you with fat liquor prior to 1856?
A. I cannot speak of any particular lot.
Q. Will you swear positively that you treated any bark-tanned sheep or lamb skins with fat liquor prior to 1856?
A. I cannot.
Q. In speaking of your use of fat liquor on different kinds of skins prior to 1856, did you tan or dress deer-skin from the raw with it?
A. I did.

Q. Did you tan the sheep-skins with fat liquor?

A. I tanned a portion of them from the raw with fat liquor alone, and part of them with oil.

Q. Did you tan the fatney hides from the raw?

A. I did, both ways, both with fat liquor and with oil.

Q. Was it the same with coon-skins?

A. We tanned them with fat liquor and in other ways from the raw.

Q. How with the panther skins?

A. I am not sure that I ever dressed them with fat liquor alone, but think I have.

Q. If you did so dress them were they so dressed from the raw?

A. Yes, sir.

Q. Did you tan or dress the goat-skins from the raw?

A. I did.

Q. Did you also tan the woodchuck-skins from the raw?

A. I did.

Q. Was it the use of fat liquor in dressing these various skins named by you, and in the way described, that you refer to in speaking of its use by you prior to 1856, except what may have been used, if any, on bark-tanned skins?

A. No.

Q. On what other kinds of skins, if any, than those just named by you did you use fat liquor prior to 1856?

A. On no other skins than those I have named except horse-hide.

Q. Were the bark-tanned sheep and lamb skins treated by you in 1856 and 1857, mentioned in your direct-examination, the same spoken of by Henry E. Krause in his testimony in this case?

A. They were.

Q. Was it in winter or summer when those in 1857 were treated?

A. I think it was in the winter or fore part of spring.

Q. At what season were those in 1858 treated?

A. I don't know.

Q. Was the liquor applied warm or cold to these?

A. I can't say.

Q. Who treated them.

A. I don't know whether I did or my men.

Q. Are you able to state who treated those in 1856 and 1857?

A. I think Henry E. Krause treated them.

Q. Can you remember any particular lot treated after 1858 and before 1862 so as to speak of it with any positiveness or definiteness?

A. I cannot speak of any lot definitely or positively.

Q. In what season of the year were those treated in 1862?

A. In October and November.

Q. Who treated these in 1862?

A. I don't remember. I had a shop full of men; don't remember which did it.

Q. When is the next lot of which you can speak with any positiveness or definiteness?

207 A. I cannot speak of any lot with definiteness or positiveness.

Q. You have treated bark-tanned sheep and lamb skins with fat liquor since 1858, have you not?

A. I have.

Q. How many in each year, or in any year since?

A. I cannot state definitely how many in any year or each year.

Q. State the number as near as you can.

A. I cannot state accurately; some hundreds of dozens each year.

Q. About how many hundreds?

A. I should say from two to three hundred dozens, may be more or less.

Q. More or less in 1869 than in 1868?

A. It has not varied much since 1868 to the present time.

Q. You stated on your direct, that you had recently examined your books, by way of refreshing your recollection, as to dressing bark-tanned sheep and lamb skins with fat liquor. Was that examination confined to a period of time anterior to 1869?

A. It was.

Q. Why could you not as well tell by your books about other years prior to 1869, as the years 1856, 1857, 1858, and 1862?

A. The books gave no account of the dressing of the skins, and I had no books that I consulted previous to 1855.

Q. If the books gave no account of the dressing of skins, how did they aid you in fixing the fact of so dressing them, and the numbers dressed in the years specified by you?

A. They did not aid me in fixing the fact of their dressing, but they aided me in fixing the amount dressed.

Q. How did they aid you in fixing the numbers dressed?

A. I find in 1856, we made about 140 dozen pairs of mittens and gloves of sheep and lamb skins bark-tanned; we might have made more.

Q. If you entered on your books the numbers of the different kinds of gloves made by you, why can you not tell from those entries, whether or not you made more than 140 dozen in that year?

A. Because we don't enter them all on the books. There are a great many sold every year that are not entered on the books at all.

Q. Have you since 1856 made gloves and mittens from bark-tanned sheep and lamb skins, in the bark-tanned state?

A. I think not.

Q. Will you testify you have not?

A. No, sir.

Q. Have you bought and sold such mittens and gloves since 1856?

A. We have.

Q. To what extent?

A. Not very extensive; perhaps from fifty to two hundred dozen a year. In some years we might not have bought or sold any. That applies to mittens, not to gloves.

Q. Did you find, on the examination of your books, anything about applying the fat liquor warm or cold?

A. Nothing.

Q. Did you testify in substance, on the trial of your suit at Albany, before spoken of, in relation to the use of fat liquor by you, that you was not able to say that you used it heated applied to bark-tanned skins, before 1869, early in the spring?

A. I don't remember.

208 Q. Did you there testify in substance, when speaking of the use of fat liquor by you, on bark-tanned skins, it was brushed on, in 1856, 1857, and 1862, but that at the then present time you generally dipped them in it?

A. I don't remember; I might have so stated.

Q. Did you there testify in substance, in speaking of the use of fat liquor on bark-tanned sheep and lamb skins, that you did not remember that you did any three years ago, and that you could not say as to four or five years ago?

A. I don't now remember that I so stated, but I presume I did.

Q. As, on the reading of your evidence, up to this point, by the commissioner, horse-hides have been added to the list of skins dressed by you prior to 1856, please state if you dressed these from the raw.

A. I think we dressed them from the raw, and also in the bark-tanned state.

Q. Can you swear positively to any horse-hides dressed by you in the bark-tanned state prior to 1856?

A. I cannot swear to it positively, but according to my best recollection we did.

Q. You have stated, in substance, on your direct examination, that bark-tanned sheep and lamb skins, treated with fat liquor, have been extensively used in Gloversville, for mittens and gloves, by others than yourself, for more than twenty years; please state the first so used to your knowledge, the time when, and the person or persons by whom the same were used.

A. I think the first I ever saw used was by U. M. Place; the time was previous to 1840; cannot tell the year.

Q. In this case, did you see the leather before being cut up, or only the gloves and mittens made from it?

A. I saw the mittens and gloves, and think I also saw the leather too, but am not positive.

Q. Did you see this leather treated?

A. I did not.

Q. Do you know of your own knowledge, independent of hearsay, how this leather was treated?

A. I don't.

Q. Where were these gloves and mittens when you saw them? State particularly.

A. They were on U. M. Place's premises on Fulton street, in Gloversville.

Q. When, where, and by whom, was the next lot of such leather used of which you are able to speak definitely?

A. Before 1860, at David Spaulding's shop on Bleeker street, in Gloversville.

Q. Did you see this leather treated?

A. I did not.

Q. Do you know of your own knowledge, independent of hearsay, how it was treated?

A. I don't.

Q. When, where, and by whom was the next lot of such leather used of which you are able to speak definitely?

A. I have seen the fences full of such skins treated with fat liquor, near Mr. Russell's premises, for two or three successive years prior to the commencement of the war.

(This answer was objected to by plaintiff's counsel as not re-
209 sponsive to the question, but insisted upon by defendant's counsel.)

Q. Was the leather you now speak of, on the fence, the next lot of the leather I am inquiring about, that you saw, after that at Spaulding's shop, of which you can speak definitely?

A. Yes.

Q. When did you see the first of this on the fence? State as definitely as you are able.

A. Twelve or fifteen years ago; cannot state positively.

Q. How long after what you saw at Spaulding's?

A. I can't state; I saw it a great many times at Spaulding's.

Q. How long before the war?
A. Two or three years.
Q. How long before the war was it that you saw the last lot on the fence?
A. A year before the war.
Q. On whose fence did you see these skins?
A. I can't state particularly on whose fence.
Q. Were skins tanned and treated by the different modes in Gloversville generally or frequently hung out to dry upon fences, in public view?
A. They were frequently and generally.
Q. Whose skins were these that you speak of seeing on the fence near Mr. Russell's?
A. I don't know.
Q. Had you any interest in these skins?
A. Not any.
Q. How many different years before the war will you swear positively to seeing skins on the fence, near Russell's, as you have stated?
A. To the best of my recollection for two or three years.
Q. How many will you swear positively to, if any?
A. For two or three years.
Q. Which, two or three?
A. I can't say which it was.
Q. Did you see any of these skins treated?
A. No, sir.
Q. Do you know of your own knowledge how they were treated?
A. I can't say that I know how they were treated.
Q. Please name the street, and describe the fence to which you refer, in reference to Mr. Russell's premises.
A. I have seen them frequently on both sides of Fulton street, and on School street, on picket fences, and on board fences. As I said before, these fences are all near Mr. Russell's premises, on Fulton street.
Q. Did you understand me in the last question as inquiring about the skins you referred to when speaking of some you saw on the fence near Mr. Russell's?
A. I did.
Q. Why did you not answer it accordingly?
A. I thought I did answer accordingly.
Q. When asked to state the next leather of the kind in question which you saw after what you saw in Spaulding's shop, did you mention some that you saw on a fence near Mr. Russell's?
A. I don't know whether I did or not. If I did it was a mistake. I meant "fences."
Q. If you mean "fences," describe each particularly, and state whether connected together or not, and, if not, how far apart, and how far each was from Russell's premises on Fulton street.
210 A. I have seen them on picket fence and board fence, not always connected, and in different places at different times. The farthest place I mentioned is perhaps ten rods from his house, or a little more or less.
Q. On what street were those you saw ten rods from Russell's?
A. On School street.
Q. Whose fence was this?
A. I can't say whose it was.
Q. Whose house was it nearest to?
A. The widow Gillet, Mrs. Chester Gillett.

Q. Were all the skins you speak of, on fences next to the street?
A. Yes, sir.
Q. And were they on Fulton and School street?
A. They were.
Q. Now name the two or three years in which you saw these skins on the fence, as definitely as you are willing to swear positively to the time.
A. In 1858, 1859, and 1860; will not swear positively to 1858.
Q. Now, leaving these skins on the fences, state when, where, and by whom the next lot of such leather was used of which you can speak definitely and positively.
A. The next I now think of I saw was a lot of manufactured goods in Dunson's shop on Main street in Gloversville; was in 1860 or 1861, but am not positive which.
Q. Did you see the leather treated from which these goods were manufactured?
A. I did not.
Q. Do you know of your own knowledge how it was treated?
A. I don't.
Q. When, where, and by whom was the next lot of such leather used of which you can speak definitely and positively?
A. I can't state any positive time; was at Alonson Judson, and by him.
Q. Do you now refer to a time subsequent to 1860, or 1861?
A. I referred to the first time I saw it there, and I think that was previous to 1860, or 1861.
Q. Did I not ask you to state the next leather of the kind you saw, after that, at Dunson's?
A. I think you did.
Q. Why then did you not so state?
A. I did not remember the question being put in that form.
Q. Will you now state when, where, and by whom the next of such leather was used to your knowledge, after that at Dunson's?
A. The next lot I remember, I used myself at Gloversville in 1862.
Q. When, where, and by whom was the next lot, (excluding yourself?)
A. I can't fix positive dates as to any other time; I have seen it at Alonson Judson's frequently.
Q. When first, and when last, at Alonson Judson's?
A. A good many years ago first; I can't fix the dates. Saw it there last year, and see it there this year.
Q. When last before 1869?
A. I can't say.
Q. Did you see it treated at Judson's before 1869?
A. No, sir.
Q. And do you know of your own knowledge how what you saw there prior to 1869 was treated?
A. I don't.
Q. You have volunteered to say, in response to a question which did not call for such an answer, that you saw this leather a good many
211 times at Spaulding's. Now will you state the number of times you are willing to swear positively to seeing it there?
(Objected to by defendants' counsel.)
A. I cannot.
Q. State the first and last times as definitely and positively as you are willing to testify.
A. I can't fix the date the first time; a good many years previous to 1860. The last time I saw it there was in 1860 or 1861.

Q. How many years previous to 1860 are you willing to testify positively to seeing such leather there?

A. I can't state.

Q. Are you willing to state positively any number?

A. Not any particular number.

Q. Can you state positively that it was as many as any number you may name?

A. I can't understand the question.

(After explanation by commissioner, the witness further testified as follows:)

A. At least four or five years.

Q. Was it all in one shop?

A. I think not; I am not positive.

Q. At what shop are you positive of? State its location.

A. Up on Bleecker street, near his house. He had two shops, both on Bleecker street. This was the east shop, in which he kept his manufactured goods. I think I have seen it also in his other shop—his cutting-shop.

A. Can you now name any other person or firm already mentioned by you who you are willing to swear, positively and definitely, used such leather before 1868 or thereabouts?

A. Yes; Samuel Dodge. That is all I can now be definite about.

Q. You mean Samuel Dodge, sen., one of the defendants in this suit?

A. I do.

Q. Did you see Mr. Dodge treat leather before 1869?

A. I don't know that I did.

Q. Do you know, of your own knowledge, of his mode or modes of treating bark-tanned sheep or lamb skins prior to 1869?

A. I don't.

On his redirect examination by defendants' counsel, the witness further testified as follows:

Q. If you examined the bark-tanned sheep and lamb skins which you saw at U. M. Place's shop and David Spaulding's shop, Alonson Judson's shop, on the fences about the residence of Russell's, the plaintiff, and at Dunson's store, please state what examination you made and their condition.

(Objected to by plaintiff's counsel.)

A. I did not examine the goods at U. M. Place's, Spaulding's, Dunson's, or Alonson Judson's, with reference to their being treated with fat liquor, but did examine the skins on the fences and they were wet with fat liquor. The goods that were made up were softened with something; that is, at the several places named. I did not made any examination further than handle the goods.

212 Q. How and with what, in your judgment, had the bark-tanned sheep and lamb skins been softened, out of which the goods you saw at the several places mentioned by you were made?

(Objected to by plaintiff's counsel.)

A. With the application of fat liquor to the skins before they were cut.

Q. State what examination you made of the skins on the fences about Russell's, and their condition.

(Objected to by plaintiff's counsel.)

A. I took hold of them and squeezed fat liquor out of them with my hands. What I examined were all wet.

Q. State whether or not you examined them more than once; and, if so, on how many different occasions.

A. I examined them more than once on two or three different occasions.

Q. During the time you have in your business used fat liquor upon skins to prepare them for mittens and gloves, state the purpose for which you used it on oil-dressed leather, and its effect upon such leather; also the purpose for which you used it upon bark-tanned sheep and lamb skins, and its effect upon such skins.

(Objected to by plaintiff's counsel.)

A. I always used it on oil-dressed leather to make it soft and more fit for gloves and mittens. It always rendered it more soft and fit for gloves and mittens. I always used it on bark-tanned to make them soft and more fit for gloves and mittens, and it did always make them soft and more fit for gloves and mittens.

Q. If you have ever used fat-liquor on bark-tanned skins other than sheep and lamb skins, state upon what kind of skins, what the purpose for which it was used, the manner of using it, and its effect.

(Objected to by plaintiff's counsel.)

A. I have used it on deer-skins tanned in bark a good many times; used it on horse-hides tanned in bark and on calf-skins. I think I used it on deer-skins tanned in bark as early as 1836 or 1837—am not positive—and many times since; have used it many years ago on horse-hide and calf-skins to make them soft. The purpose was to make them soft and suitable for gloves and mittens. On deer-skins we always dipped them in fat liquor. To the horse-hides and calf-skins we applied it with the sponge or brush. The effect of the application of fat liquor was to make them soft and suitable for mittens and gloves.

Q. What effect, if any, did the application of fat liquor to these several kinds of skins have upon the squeak in such of the skins as contained squeak?

(Objected to by plaintiff's counsel.)

A. It removed it.

Q. State the condition of the fat liquor used on these skins.

A. I think it was in a cold state, but I am not sure whether it was or not.

213 Q. You stated on cross-examination in substance that you treated a quantity of bark-tanned sheep and lamb skins with fat liquor for mittens and gloves in October or November, 1862. What circumstance, if any, enables you to fix the time of the treatment of said skins with fat liquor?

(Objected to by plaintiff's counsel.)

A. I left St. Louis on the 20th of October in that year, and went directly to New York from there; bought the bark-tanned skins in New York, brought them to Gloversville, and made between 300 and 400 dozen of gloves of them, and went back to the West on the 8th of December, 1862, after the goods were all shipped, and sold them.

Q. What, if anything, was done with these skins just mentioned after you purchased them and before they were made into goods?

(Objected to by plaintiff's counsel.)

A. They were softened with fat liquor.

Q. State whether or not you did, at the commencement of this trial, and still do, understand that the evidence taken in this case is to be used, so far as the same is applicable, in the case now pending in this court in favor of the plaintiff in this case, and against yourself and your brother, John W. Place, for an infringement of the plaintiff's patent, and accounting.

(Objected to by plaintiff's counsel.)

A. I did so understand it, and do so now.

On his further recross-examination by defendants' counsel the witness further testified as follows:

Q. How many times did you squeeze the skins on the fence near Russell's?

A. Twice certain, and I don't know but more.

Q. Were these on different occasions; and, if so, the same year or in different years? State particularly the time.

A. They were on different occasions. I don't know if it was the same year or not. I cannot state particularly the time.

Q. Why did you squeeze them?

A. To see what was in them.

Q. Are you in the habit of going round squeezing your neighbors' skins to see what is in them?

A. I have always been in the habit of examining skins when I came where they were.

Q. From the squeezing you did to those skins, can you now swear that nothing but fat liquor had been applied to them in the dressing?

A. No, sir.

Q. Can you swear definitely, or positively, to the ingredients or materials with which those skins had been treated, or the mode of treatment, or to anything concerning their treatment, except that fat liquor had been applied to them?

A. I can't. I discovered nothing but fat liquor in them.

Q. Have you any knowledge that fat liquor had been applied
214 to any except those you squeezed?

A. No positive knowledge, but they all looked alike.

Q. Did you go to all the skins and examine them by the eye particularly, or merely cast your eye over them casually as you were passing?

A. I did not. I merely cast my eye over them casually as I was passing.

Q. Are you, or are you not, aware that for many years past, in Gloversville and vicinity, bark-tanned skins have been treated with eggs and other processes than fat liquor for the purpose of softening them and taking out the squeak?

A. No, sir; I am not aware of it. I have seen soap used, but not eggs. I have used soap.

Q. Do you understand that eggs, either alone or in connection with other ingredients, have been used in Gloversville and vicinity for a good many years for the purpose specified in the last question?

A. No, sir.

Q. Are you not aware that witnesses for the defence, on the trial of one or more of the suits before referred to, for a violation of plaintiff's patent, have testified to the use of eggs for the purpose specified?

A. Yes.

Q. Do you wish to be understood as testifying that eggs and other things than fat liquor have not been used for the purpose in Gloversville and vicinity for a good many years past?

A. No, sir.

Q. When did you use soap for that purpose?

A. I used it last week, and have frequently used it for many years.

Q. Have you used it alone, and also in connection with other ingredients?

A. I have both.

Q. Are you now willing to swear that a lot of skins which you saw

10 or 15 years ago hanging on a fence, and did not examine or handle, except by the eye, were softened or dressed with fat liquor or something else?

A. No, sir.

Q. Are you now willing to swear that gloves and mittens that you saw 10 or 15 years ago, and did not examine, with reference to the treatment of the leather, were made from leather treated with fat liquor?

A. No, sir.

Q. On your direct and redirect examination, you have spoken of the use of fat liquor by you on oil-dressed leather. Do you refer to its use in connection with the oil-dressing of skins from the raw, as it is practiced in Gloversville and vicinity by milling in oil, and other processes connected with it?

A. No, sir.

Q. Is oil-dressed leather made from sheep and lamb skins used in Gloversville and vicinity for mittens and gloves, and has it been so used for more than twenty years past?

A. It is used, and has been for more than twenty years.

Q. When the oil-dressing processes are perfect, do they produce good leather, suitable for mittens and gloves?

A. Yes.

Q. Do you know the manner of dressing skins in oil from the raw, as it is practiced at the various skin-mills in Gloversville, and has your method been similar?

215 A. I do know the mode and my manner is similar.

Q. And has your use of fat liquor on oil-dressed skins, referred to in your direct, been similar to theirs?

A. It has.

Q. Do not the trade in Gloversville generally procure deer-skins in the raw that are used in their business?

A. They generally do.

Q. Can you now swear positively to any particular lot of bark-tanned deer-skins treated by you with fat liquor; and, if so, to how many lots are you willing to swear positively?

A. One lot in 1836 or 1837—cannot tell positive which year—and five or six different lots more.

Q. To how many lots of bark-tanned horse-hides and calf-skins can you swear positively that were treated by you with fat liquor, and when was each? State particularly.

A. I can't state particular how many lots; I can't state particular when it was done.

Q. When did you first understand that the evidence taken in this case was to be used as far as applicable in the case pending against you?

A. Shortly after the suit was commenced.

Q. How soon after? State more definitely, and as definitely as possible.

A. As soon as I employed counsel.

Q. Did you so understand when you advised Klein not to settle, and when you circulated a subscription-paper to raise funds for fighting this patent, and procured Mr. Dodge's signature to it?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Did you in July or August, 1869, at the store of Jonathan Ricketts, in New York, ask Barney Graff to get a pair of each kind of Russell's gloves made from bark-tanned sheep or lamb skins softened, saying that you wanted them for samples, or that in substance?

(Objected to by defendants' counsel.)

A. I don't recollect.

Q. Did you at the same place, and in the months of July or August, 1869, say in substance to Barney Graff that if you could get such leather as Russell used (referring to his bark-tanned sheep and lamb skins) you could make the goods for less than Russell sold?

(Objected to by defendants' counsel.)

A. I don't remember so stating.

ISAAC V. PLACE.

Subscribed and sworn this 24th day of October, 1872, before me.

J. WENDELL,
Special Examiner.

URIAL CASE, a witness produced, sworn, and examined on the part of the defendant, testified as follows:

216 I reside in Gloversville, Fulton County. I have lived there thirty-four years. I am 62 years of age. The business I have been engaged in at Gloversville for thirty-four years was manufacturing mittens and gloves. I have used bark-tanned sheep and lamb skins in the manufacture of mittens and gloves. I first used them 18 or 19 years ago. I got these skins in the bark-tanned state. I prepared them for mittens and gloves by putting them into fat liquor. I dipped the skins in fat liquor, and some I brushed the fat liquor on; done it in no other way. I applied it sometimes warm and sometimes cold. The effect was to soften them. The skins did not have that squeak about them after treatment.

Q. For what use, if any, were these skins suitable after treatment with fat liquor, as you have described?

A. Some for mittens and some for gloves.

Q. State whether or not they were suitable for mittens or gloves before being treated with fat liquor?

A. I cut some before, but they were not so soft or as good.

Q. What use did you make of the skins so treated by you?

A. I cut them into mittens and gloves.

Q. What did you do with the mittens and gloves made from these skins?

A. I sold them.

Q. About how many bark-tanned sheep and lamb skins did you treat with fat liquor, as described by you, and make into mittens and gloves the season or year to which you refer in your testimony?

A. I should think about 25 or 30 dozen skins.

Q. When next, if at all, did you treat any bark-tanned sheep or lamb skins with fat liquor to prepare them for mittens or gloves?

A. In the year 1870—I mean the latter part of 1869 and fore part of 1870.

Q. Where did you treat these?

A. At Gloversville.

Q. How many skins did you treat at this time?

A. Fifty dozen skins.

Q. State the manner of treating them.

A. I dipped them in the fat liquor warm.

Q. What effect was produced by the application of fat liquor, as you have described, upon the skins?

A. It softened them and took the squeak out.

Q. Did it render them suitable for any purpose; and, if so, for what purpose?

A. For mittens and gloves.

Q. State, if you know, whether or not other manufacturers of mittens and gloves in Gloversville have used bark-tanned sheep or lamb skins in their business, rendered soft and suitable for mittens and gloves by the application of fat liquor.

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. When first to your knowledge did others use them?

(Objected to by plaintiff's counsel.)

217 A. Nineteen or twenty years ago.

Q. State who used them in this way 19 or 20 years ago.

(Objected to by plaintiff's counsel.)

A. Isaac V. Place. I don't remember any others now.

Q. Who since that time, if any one?

(Objected to by plaintiff's counsel.)

A. Mr. Samuel Dodge, Solomon Jeffers, George W. Gillett, and Mr. Lefevre, who was in co. with Gillett, Isaac V. Place. I don't remember any one else just now.

Q. When did these several persons use skins prepared in this way?

A. In the latter part of 1869, and in 1870 and 1871.

Q. At what place?

A. At Gloversville.

Q. State whether or not you have used bark-tanned deer-skins in the manufacture of mittens and gloves at Gloversville.

A. I did, twenty-five years ago this last summer.

Q. To what extent?

A. Probably about five to eight dozen skins.

Q. Did you get these in the bark-tanned state, or tan them yourself?

A. I got them in the bark-tanned state.

Q. State what treatment, if any, you subjected them to to prepare them for mittens and gloves.

A. I put them in fat liquor, I think, that was cold.

Q. What effect, if any, did the application of fat-liquor produce upon them?

A. It softened them, and took the color of the bark or bark-color out of the skin.

Q. What use did you make of these skins?

A. I cut them into gloves, and sold the gloves.

Q. State, if you know, whether West Fulton street in Gloversville runs in nearly an east and west direction.

A. It does within one degree, as I have been told.

Q. How long have you lived on the north side of that street?

A. Twenty-four years last April.

Q. Has your place of business and manufacturing-shop been on that street during the whole of that time?

A. It has.

Q. Did Mr. Russell, the plaintiff, live on the south side of that street opposite or nearly opposite your place; and, if so, how long?

A. He has lived there some twelve or 15 years, may be longer; lived there up to the commencement of the war. He then moved into Bleecker street.

Q. While the plaintiff lived on Fulton street where was his place of business, and in what business was he engaged? State, if you know.

A. He lived across the way from where I now live. He was in the business of manufacturing gloves, part of the time, in the basement of his residence.

Q. Have you been in his place of business?
A. I have been in his place of business where he manufactured gloves.
Q. What kind or kinds of gloves did he manufacture, so far as you know, on Fulton street?
(Objected to by plaintiff's counsel.)
218 A. Bark-tanned button-tops.
Q. What kind of skins were these bark-tanned skins?
(Objected to by plaintiff's counsel.)
A. They looked to me like bark-tanned sheep-skins.
Q. What, in your judgment, were they?
(Objected to by plaintiff's counsel.)
A. Bark-tanned sheep-skins.
Q. Did he make them into mittens or gloves in the bark-tanned state?
(Objected to by plaintiff's counsel.)
A. He did.
Q. In any other state?
(Objected to by plaintiff's counsel.)
A. Not that I know of.
Q. State, if you know, whether or not these bark-tanned sheep skins, made into gloves by the plaintiff, were subjected to any treatment, after being finished in the bark-tanned state, and before being cut into gloves.
(Objected to by plaintiff's counsel.)
A. They were.
Q. By whom?
(Objected to by plaintiff's counsel.)
A. By Mr. Russell, the plaintiff.
Q. State, if you know, what treatment they were subjected to by the plaintiff.
(Objected to by plaintiff's counsel.)
A. They had the appearance of being treated with fat liquor.
Q. Did you examine any of these skins?
A. I did.
Q. Where?
A. On the fence.
Q. What fence?
A. On Mr. Russell's fence on Fulton street.
Q. State what examination you made of these skins?
A. I smelt of the skins, then took hold of them and smelled of them; not only that, I squeezed them.
Q. State whether or not you examined them more than once; if so, on and about how many different occasions?
A. Two or three times.
Q. When was it you examined these skins?
A. Previous to the war, or about that time.
Q. State if you know whether these examinations made by you were all made in one year or in different years?
A. In different years.
Q. In what condition were these skins at the several times you examined them?
A. They were quite wet, and once they were somewhat dry.
Q. State, if you are able to, with what they had been made wet.
(Objected to by plaintiff's counsel.)
A. It smelled like fat liquor, and when I squeezed them it looked like fat liquor.
Q. If you have personally used fat liquor in your business, state for how long a time.

(Objected to by plaintiff's counsel.)

A. Forty-five years, in my business and before I left home, with my father who was a glove-manufacturer; I was brought up in the business.

Q. Can you tell fat liquor when you see it?

A. Yes, sir.

Q. Can you tell it by the sense of smelling?

A. Yes, sir.

219 Q. When you squeezed the skins hanging on Russell's fence, as stated by you, what, if anything, did you observe?

(Objected to by plaintiff's counsel.)

A. I observed the appearance of fat liquor.

Q. What, in your judgment, had these skins which you saw and examined on Russell's fence been treated with?

(Objected to by plaintiff's counsel.)

Q. With fat liquor.

Q. State on what particular fences you saw these skins placed on by Russell.

A. On Mr. Russell's fence, Mr. Edward Leonard's fence, and, if I remember right, on the school-house-lot fence, a little farther west on the opposite side of the street. The Leonard fence joins Mr. Russell's fence on the west, on the same side of the street.

Q. For how many years before Russell, the plaintiff, moved from Fulton street did you see him hang out on these fences mentioned by you bark-tanned sheep and lamb skins treated in the manner stated by you?

(Objected to by plaintiff's counsel.)

A. As near as I can recollect, for four or five years.

Q. State, if you know, whether or not Russell, the plaintiff, has, ever since he moved from Fulton street on Bleecker street, used in his business the same kind of skins, treated in the same manner as those you saw on the fences, heretofore mentioned by you in your testimony in this case.

(Objected to by plaintiff's counsel.)

A. He has.

Q. Have you examined any of the skins treated by him since he has lived on Bleecker street?

A. No, sir.

Q. Have you seen any of them?

A. Yes, sir.

Q. Where?

A. Hanging out on the lines.

Q. How frequently have you seen them?

A. Occasionally every day in the week.

Q. How near were you to them when you saw them?

A. An eighth of a mile.

Q. Did you understand the last question when answering?

A. No, sir; I did not. I supposed he meant from where I lived.

Q. Now, I will repeat the question. How near were you to these skins when you saw them on Bleecker street?

A. Probably ten rods or more.

Q. Did the plaintiff hang these skins on any other street-fence after he moved on Bleecker street?

(Objected to by plaintiff's counsel.)

A. Yes, sir; on what is called Elm-street fence, and on lines in Elm street, between the road and fence.

Q. Did you examine any of those on Elm street?

A. I rode right over some of them that the wind had blown into the beaten road.

Q. State how near you were to those not blown down.

A. I should think not over 15 to 20 feet.

Q. State, if you know, whether the plaintiff, Russell, about the time of the commencement of the war and prior thereto, manufac-
220 tured gloves, extensively or otherwise, from the kind of skins you saw on the fences on Fulton street, as detailed by you, and treated as those were.

(Objected to by plaintiff's counsel.)

A. He cut and made gloves out of the same kind of skins I saw on the fence. He kept busy at work cutting there during the season.

Q. Did you know Edgar W. Dunson in his life-time?

A. I did. He is now dead; has been dead some two or three years.

Q. Do you know what business he was engaged in prior to the war?

(Objected to by plaintiff's counsel.)

A. He was engaged in manufacturing mitttens and gloves in Gloversville.

Q. State, if you know, whether or not he used bark-tanned sheep and lamb skins in his business.

(Objected to by plaintiff's counsel.)

A. I do not know.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Were the bark-tanned sheep and lamb first used by you about nineteen years ago, and which you purchased in the bark-tanned state, shaved or unshaved when you submitted them to the treatment you speak of?

A. Some were and some were not.

Q. What proportion of the 25 or 30 dozen spoken of by you were shaved when you applied fat liquor to them?

A. As near as I can recollect, there were from a dozen to a dozen and a half.

Q. Prior to that time had you made gloves and mittens, or either, of bark-tanned sheep or lamb skins in the bark-tanned state?

A. Not to my knowledge.

Q. Have you since?

A. Yes, sir.

Q. How many, and when?

A. Fifty dozen skins, the latter part of 1869 and in 1870.

Q. Prior to the 25 or 30 dozen treated by you some 19 years ago, had you made gloves and mittens, or either, from bark-tanned sheep or lamb skins which had not been treated with fat liquor?

A. I don't recollect whether I did or not.

Q. Were these 25 or 30 dozens the only bark-tanned sheep or lamb skins you ever had prior to 1869?

A. No, sir.

Q. Did you ever manufacture any such skins into gloves or mittens prior to 1869, except the 25 or 30 dozens spoken of?

A. Yes, sir; about the time of the commencement of the war.

Q. How many at that time?

A. If I remember right, something like seventy-five to one hundred dozen skins.

Q. Were these bark-tanned sheep and lamb skins?

A. Yes, sir; they were.

Q. Did you purchase them in the bark-tanned state?

A. I did.

Q. Did you make them up in the bark-tanned state into gloves and mittens?

A. Yes, sir.

Q. Do you remember any other lots between the 25 or 30 dozens some 19 years ago and the 50 dozen in 1869 and 1870 which were
221 made by you into mittens and gloves from sheep or lamb skins in the bark-tanned state?

A. I do not.

Q. Did you treat any with fat liquor during the period last spoken of?

A. No, sir; I did not.

Q. Were you sworn and examined as a witness for defendant in the case of this plaintiff against Albert Klein, for an infringement of this patent, tried at Utica in March, 1871?

A. I think I was.

Q. Don't you know whether you were or not?

A. I believe I was.

Q. Did you then, when testifying to the 25 or 30 dozen treated by you some 19 years ago, say in substance that you put on some fat liquor with sponge, and also dipped some?

A. I think now I did.

Q. On your direct examination to-day in this case did you, in speaking of the same lot of skins, say in substance that you dipped them in fat liquor and brushed the fat liquor on some?

A. I don't know as I said brushed them on, but remember saying I dipped some.

Q. On the trial at Utica, in speaking of the same lot of skins, did you say "there were probably 20 or 25 dozen of them?"

A. I could not say; perhaps I did.

Q. Did you then testify in substance that it was then about 18 or 20 years ago, as near as you could remember, that you treated that lot of skins?

A. I think I did.

Q. On the trial at Utica did you say anything at all about the squeak in the leather after your treatment of the skins with fat liquor?

A. I don't remember.

Q. Have you had any conversation with either of defendants or their counsel about this matter since the adjournment last evening?

A. I have not.

Q. At what season of the year did you treat those 25 or 30 dozen you speak of, some 19 or 20 years ago?

A. If I remember right, it was at the commencement of the fall of the year; was cold weather.

Q. How long a period of time did the treatment of the whole cover?

A. As near as I can recollect, it might have been a month or six weeks.

Q. How many did you treat at a batch?

A. Probably four or five dozen sometimes more and sometimes less; might have been seven or eight dozen.

Q. What proportion of the whole lot did you treat by dipping?

A. Might have been one-third, one-half, or three-quarters; cannot tell exactly, but was somewhere along there.

Q. Which of these proportions was it? State as accurately as you are able.

A. That is as near, probably, as I can come to it.

Q. Were all the batches dipped by you done consecutively, or did you alternate between dipping and brushing on?

A. No; I did not do it consecutively, but I done it alternately.

Q. What proportion of the batches were treated with the warm liquor?

A. I don't know as I can tell. I know I done some warm and some cold.

222 Q. Can you give no idea of the number of batches treated by you with warm liquor?

A. I cannot.

Q. Did you alternate between warm and cold, sometimes using it warm and sometimes cold, according to convenience or circumstances?

A. I did use it sometimes warm and sometimes cold, according to circumstances.

Q. What did you do, if anything, to these skins after the application of fat liquor and before they were cut up into mittens and gloves?

A. Those I dipped I hung out and dried. Those I brushed did not need hanging out; I packed them down until they got damp even through; then I staked them, except some of the lightest ones, being too wet, I also hung out to dry.

Q. Can you swear that any of those that were brushed were afterwards hung out to dry?

A. I think I hung out the lightest ones to dry.

Q. Will you swear positively that you hung out any of the brushed ones to dry?

A. I will.

Q. How many?

A. I cannot tell.

Q. Can you swear positively to a dozen?

A. Perhaps there might be a dozen or two dozen.

Q. Question repeated.

A. Yes; there were a dozen, probably more.

Q. Can you swear positively to two dozen?

A. I cannot.

Q. When were these hung out?

A. They were hung out as soon as treated.

Q. Did you understand by the last question that you was called upon to state at what point of time these were hung out?

A. It was in the fall of the year, but cannot tell the year or the month.

Q. Was it in the early or the latter part of the month or six weeks you were engaged on the whole lot?

A. Was more or less during the whole time of the month or six weeks, from the beginning to the end.

Q. You stated on your direct examination that some of the leather from this lot of skins was suitable for mittens and some for gloves. Please state what portion was suitable for each.

A. As near as I can state, one-third or one-half were suitable for mittens, the rest for gloves.

Q. Did you cut some of the lightest of the skins into mittens?

A. I did when I lined them.

Q. How many of the light skins did you cut into mittens and line them?

A. I cannot tell.

Q. What kind or class of gloves did you make of those cut into gloves?

A. I cut them into Plymouth gloves.

Q. Is that class of gloves a common working-glove, and comparatively coarse?

A. They are.

Q. Were those skins treated by you with fat liquor, the latter part of the year 1869 and in 1870, all dipped in warm fat liquor?

A. They were.

Q. Have you since that time treated bark-tanned sheep and lamb skins in that way?

A. No, sir.

Q. Did Mr. Russell, the plaintiff, about that time or subse-
223 quently thereto call upon you, and warn you or state in substance that you were interfering with his patent?

(Objected to by defendants' counsel.)

A. He called in to see me and ask me if I knew that I was infringing on his patent, and I told him I did not.

Q. Did he in language or substance say you were infringing, and that you must refrain from it?

(Objected to by defendants' counsel.)

A. He said he thought I was infringing on his patent, but he did not forbid me at all of doing anything more.

Q. Did he tell you you might go on and infringe on his patent?

(Objected to by defendants' counsel.)

A. He did not.

Q. Did you claim in substance on that occasion that you were not infringing, but had a way of your own of fixing skins?

(Objected to by defendants' counsel.)

A. I did.

Q. You stated in substance on your direct examination, the first you knew of bark-tanned sheep or lamb skins being treated with fat liquor was 19 or 20 years ago, by Isaac V. Place. Please state, if you know, where they were so treated by Isaac V. Place.

(Objected to by defendants' counsel.)

A. At his place of business, I suppose, at Gloversville.

Q. Did you see them treated by him?

A. No, sir; I did not.

Q. Have you any personal knowledge as to how he treated bark-tanned sheep and lamb skins 19 or 20 years ago, or any knowledge except what you have heard from others?

A. Nothing more than what I have heard.

Q. Then, when you swear positively on your direct examination that Isaac V. Place treated bark-tanned sheep and lamb skins with fat liquor 19 or 20 years ago and rendered them soft and suitable for mittens and gloves, you speak entirely from hearsay, do you?

A. No, sir.

Q. Did you in answer to the last question but one say that you knew only of his so treating skins 19 or 20 years ago from what you heard, or that in substance?

(Objected to by defendants' counsel. Question waived.)

Q. Did you in answer to the last question but one say in substance that you had no personal knowledge as to how Isaac V. Place treated bark-tanned sheep and lamb skins 19 or 20 years ago, and no knowledge except what you had heard?

A. I did.

Q. Is that answer correct?

(Objected to by defendants' counsel.)

A. I think it is.

Q. Since you have been in the glove and mitten business at Gloversville, and for the last 15 or 20 years, have you been pretty well acquainted with the character and extent of the mitten and glove business there?

A. Yes, sir.

224 Q. On your direct examination you speak of having seen some bark-tanned sheep and lamb skins on plaintiff's fence on Fulton street. Please state how long it was before he removed to Bleecker street that you saw the first.

A. I think I saw them there just previous to the war, in the year 1859 or 1860.

Q. State how long it was before he moved to Bleecker street you saw the first.

A. Some four, five, or six years.

Q. Will you swear it was five years before he moved away to Bleecker street?

A. I should think it was.

Q. Will you swear positively that it was four years?

A. Yes, sir.

Q. Will you swear positively it was before the commencement of the war you saw the first?

A. I think it was, still I won't swear positively.

Q. How many batches will you swear positively seeing on the fences on Fulton street?

A. Quite a number; would say half a dozen.

Q. How many times will you swear positively to having examined them in the manner stated by you on your direct examination?

A. Two or three times.

Q. In making these examinations, were you trying to steal Mr. Russell's process of preparing his leather?

A. No, sir; I was not.

Q. Then these examinations were merely casual as you were passing, were they?

A. They were.

Q. Did you see these skins treated by Mr. Russell?

A. I did not.

Q. Are you able to state of your own knowledge by what process or processes or with what ingredients these skins were treated?

A. Yes, sir.

Q. How?

A. By squeezing and smelling of the skins.

Q. Is that the only way?

A. That is the only way that I know.

Q. Can you swear positively from that, that no other process or ingredients were used in the preparation of those skins than fat liquor, or do you mean simply that in this examination you detected fat liquor?

A. It implies two questions: in the one I would say that I did not know as to fat liquor—to that I swear positively; as to whether there was any other ingredients than fat liquor used I don't know.

Q. Do you know, and can you swear from that examination, whether these skins had been subjected to more than one process; and if so, to how many different processes?

A. I don't know whether they had been subjected to more than one process or not.

Q. Do you know of your own knowledge anything more than that fat liquor had been applied to them in some way prior to the time you examined them?

A. Not that I know of.

Q. When did you first communicate to these defendants or Isaac V. Place, that you had examined these skins by smelling and squeezing?

A. Within the past year.

Q. Did you ever smell and squeeze any skins belonging to other neighbors or other manufacturers at Gloversville as they were hanging
225 out on fences and lines as these were?

A. I have; I have been in the habit of doing so, as I was passing along, ever since I have been in business.

Q. For the four or five years prior to plaintiff's removal from Fulton to Bleecker street, did you see his mittens and gloves after they were made up?

A. I saw his gloves.

Q. I understand you to say that you made no examination of Russell's skins after he removed to Bleecker street. Is that so?

A. Yes.

Q. Have you any personal knowledge of the manner, process, or ingredients employed by him in the treatment of skins after he removed to Bleecker street?

A. No sir.

Q. Have you ever seen skins treated by what is called the "egg process?"

A. No, sir.

Q. And do you know, then, whether skins treated by the egg process and those treated with fat liquor appear alike or unlike when hanging out on the fences or lines?

A. I do not know.

Q. Did you see Mr. Russell treat any of his skins after he removed to Bleecker street?

A. I did not.

On his redirect examination by defendants' counsel the witness further testified as follows:

Q. Did you cut and make into mittens and gloves the 50 dozen bark-tanned sheep and lamb skins spoken of by you as having been made into mittens and gloves by you in the latter part of 1869 and forepart of 1870, in the bark-tanned state or after treatment with fat liquor.

A. After treatment with fat liquor.

Q. State whether or not you staked all the bark-tanned sheep and lamb skins used by you for mittens and gloves in your business after treating them with fat liquor.

A. Yes, sir.

Q. What class of the 25 or 30 dozen bark-tanned sheep and lamb skins used by you in your business some 18 or 20 years ago, and mentioned by you in your testimony, were suitable for mittens and what class for gloves?

A. It involves two questions. I cut some heavy ones into mittens and some light ones, and the smoothest ones I cut into gloves.

Q. Did Mr. Russell, the plaintiff, at the time he called on you and stated that he thought you were infringing his patent, as stated on your cross-examination, ask you how you were dressing your bark-tanned sheep and lamb skins?

A. He did.

Q. What reply did you make to this inquiry?

A. I told him that was my business.

Q. Did he in that conversation tell you what his patented process was, or how or with what he dressed his bark-tanned skins?

A. I think not.

Q. On how many different occasions did you see Russell's gloves manufactured by him at his place of business on Fulton street after they were made up?

(Objected to by plaintiff's counsel.)

226 A. Some three or four times.

Q. Did you see or examine the leather at his place of business on Fulton street while being made into gloves?

(Objected to by plaintiff's counsel.)

A. I did.

Q. If on more than one occasion, on how many different occasions?

(Objected to by plaintiff's counsel.)

A. On two or three different occasions.

Q. Have you seen and examined gloves manufactured by Russell from bark-tanned sheep or lamb skins, rendered soft and pliable by some process or treatment, since he removed to Bleecker street; and, if so, how frequently, and when?

(Objected to by plaintiff's counsel.)

A. I have, some three or four days in a week; was a year ago this last season.

Q. State how the leather in the gloves mentioned by you in your last answer compared as to softness and pliability with the skins you saw on Russell's fence and other fences on Fulton street and with the leather you saw him making into gloves at his shop on Fulton street?

(Objected to by plaintiff's counsel.)

A. The gloves that I saw in his shop, where he cut them, I should judge was of the same kind of leather as I saw in his shop.

Q. State how the leather in the gloves you saw Russell making in his shop on Fulton street compared as to softness and pliability with the leather in the gloves made by him after his removal to Bleecker street, and which you examined a year ago last summer, as stated by you.

(Objected to by plaintiff's counsel.)

A. I should judge that it was the same in substance; was equally as soft and good.

Q. Did you examine the bark-tanned sheep and lamb skins used by Isaac V. Place some 19 or 20 years ago, and heretofore mentioned by you in your testimony, or the goods made from those skins?

(Objected to by plaintiff's counsel.)

A. I did examine the goods made from them.

Q. With what, in your judgment, were those skins treated while in the bark-tanned state and before being made into goods?

(Objected to by plaintiff's counsel.)

A. My judgment is they were treated with fat liquor.

On his recross-examination by plaintiff's counsel the witness further testified as follows:

Q. When is the first time you remember to have examined the leather of plaintiff which was being made into gloves at his place on Fulton street?

A. As near as I can recollect, I think it was in the year 1857 or 1858.

Q. Which?

227 A. I should think in the year 1857.

Q. Will you swear positively that it was in the year 1857?

A. I don't know as I can say positively.

Q. What part of the year?
A. Was in warm weather; I should judge between spring and fall.
Q. Will you swear positively it was warm weather?
A. No, sir.
Q. Who was present on this occasion?
A. I cannot remember.
Q. Will you swear that any one was present on that occasion except yourself?
A. I cannot.
Q. What did you see on that occasion?
A. I saw skins.
Q. How many?
A. I could not say how many.
Q. Where were they?
A. On the fence or lines.
Q. Was anybody cutting them up on the fence or line, or making them up into mittens and gloves?
A. Nobody was cutting them up on the fence or lines.
Q. What else did you see on this occasion besides skins?
A. I saw in his shop gloves.
Q. What kind of gloves?
A. Button-tops.
Q. How many?
A. A number of dozen.
Q. How many dozens?
A. I could not say.
Q. And yet you don't know as anybody else was present on that occasion?
A. I think Mr. Russell was there.
Q. Will you swear he was?
A. Yes, sir; I will.
Q. Did you not swear a few minutes since you did not rememberthat any one else was present?
A. That was when I saw them on the fence or line.
Q. Did you not swear a few minutes since that, on the first occasion when you saw this leather being made up into mittens and gloves, you did not know or remember that any one else was present except yourself?
A. I did so state, but I misunderstood the question.
Q. How did you understand the questions?
A. The way I understood it was, I supposed the question meant when I examined the skins on the fence and lines?
Q. Did I not ask you to state the first time and the first occasion when you saw this leather being made into mittens and gloves?
A. I think you did.
Q. In the several answers you have made to the questions in relation to this first occasion when you saw the leather being made into mittens and gloves, did you have reference to the time you saw it hung out on the fence?
A. No, sir.
Q. If that be so, when you answered that the first time you saw the leather being made into mittens and gloves no one was present that you remembered, how could you have had reference to the time you saw the skins hanging on the fence?
A. My first examination was when the skins were hanging on the

fence, and there was no one with me at that time; but when they were staked and in the shop ready to cut, I think Mr. Russell was present.

228 Q. Now, won't you have the goodness to state the first time you now remember to have seen that kind of leather in Mr. Russell's shop being cut into mittens and gloves?

A. I think it was in the year 1857, as near as I can remember.

Q. Will you swear that it was in 1857?

A. Not positively—as near as I can remember.

Q. What month was it?

A. In August or September, as near as I can remember.

Q. Can you swear it was either of these months?

A. I cannot, and don't know but I could if I could see my books.

Q. Who was present on that occasion in the shop?

A. I think Mr. Dempster was present, and one of Mr. Russell's daughters was in the shop.

Q. What Dempster and which daughter? Give their christian names, if you know.

A. I think, if I remember right, it was Cornelius Dempster, and I think Mr. Russell's oldest daughter, and I think her name was Carrie.

Q. Will you swear positively that either of these persons *were* pres*ented* on this occasion?

A. As near as I can remember, they were, but cannot swear positively.

Q. How long were you in on that occasion?

A. Five or ten minutes.

Q. Did you have any conversation with anybody in the shop?

A. I think I had a few words with Mr. Russell.

Q. Can you swear positively that you did?

A. I don't know as I can. To the best of my recollection I think I did. It is a good while ago. My judgment teaches me, on thinking the matter over, that I did.

Q. What can you now positively swear that you did while in there on that occasion, if anything?

A. I picked up a pair of gloves and tried on one glove, then pulled it off and laid it down again. I examined the glove I put on, to see how soft it was and how it was made.

Q. Is that all you can now positively state that you did in there on that occasion?

A. As near as I can remember; I don't remember anything more.

Q. When was the second time that you examined this leather being made into mittens and gloves, that you can now distinctly recollect so as to swear to it positively?

A. I don't know as I can swear to the exact time.

Q. State as accurately as you can the second time that you now distinctly remember.

A. I cannot now tell the time; was some time after that; cannot tell the precise time.

Q. Is there any one time, after the first already spoken of, that you can now distinctly recall, so as to testify to it with any degree of accuracy or particularity?

A. No, sir.

Q. Where were the gloves of Russell's manufacture that you refer to as having seen a year ago last season, and between which and those made by him in Fulton street you instituted a comparison?

A. The gloves were in Mr. Hyman's shop, ready to be laid off.

Q. Did you know of your own knowledge whose gloves they were, or where they came from?

A. No, sir.

229 Q. What kind of examination did you make of these gloves?

A. I tried on two or three pairs; looked at them.

Q. Is that all?

A. That is all.

Q. What kind or class of gloves were these that you tried on?

A. Button-tops and gauntlets, both.

Q. Do you know that it often happens that in a lot of skins treated by any process known to the trade, some skins come out softer and better than the whole lot will run?

A. Yes, sir.

Q. Where were the goods examined by you made, as you say, by Isaac V. Place, from bark-tanned sheep and lamb skins?

A. At his place of business in Gloversville.

Q. When did you make the examination?

A. About 18 or 20 years ago; somewhere along there.

Q. Where was his place of business when you saw them?

A. On Fulton street.

Q. Who was present?

A. I don't remember.

Q. Can you swear that any one was present or not?

A. Some of his workmen were in at the time.

Q. Do you know who or how many?

A. I could not say.

Q. How long were you in on that occasion?

A. Might have been five minutes, might have been ten, might have been more.

Q. How long was it, according to your best recollection?

A. Five or ten minutes.

Q. Did you transact any business there on that occasion?

A. I think not.

Q. What kind of an examination did you give the gloves that you can now particularly remember and state?

A. As near as I can now recollect, I looked at them and felt of them, I believe.

Q. Can you swear positively that you felt of any?

A. No, sir.

Q. How many can you swear positively of seeing?

A. If I remember right, 5 or 6 dozen.

Q. Were these laying up in bunches, or how were they situated?

A. Some were and some were not, if I remember right.

Q. Can you swear about their situation with any degree of positiveness?

A. No, sir.

Q. What class of gloves were they?

A. I do not know.

Q. Is it from this examination now detailed by you that you have testified that in your judgment these gloves were made from skins treated with fat liquor?

A. Yes, sir.

URIEL CASE.

Taken, subscribed, and sworn this 18th day of December, 1872, before me.

JACOB WENDELL,
Special Examiner.

JOHN W. PLACE, a witness produced, sworn, and examined on the part of the defendant, testified as follows:

My age is 42 years. I reside at Gloversville; have resided there 26 or 27 years. While residing in Gloversville my business has been
230 manufacturing mittens and gloves most of the time. I went away from Gloversville in September, 1857. I went to the State of Wisconsin. I returned to Gloversville again to reside in March, 1866. I had been engaged in manufacturing mittens and gloves at Gloversville, before I went to Wisconsin, for about seven or eight years. I have been engaged in the manufacture of mittens and gloves at Gloversville ever since my return from Wisconsin in 1866. I am now a partner in that business with Isaac V. Place, and have been so engaged since January, 1868. I am acquainted with an article used in the dressing of leather for mittens and gloves known as fat liquor, and have been so acquainted for about 26 or 27 years. I have always used it in my business of manufacturing. I have used bark-tanned sheep and lamb skins in my business in the manufacture of mittens and gloves; first used them in 1856; used them in Gloversville. I think I used about one hundred dozen skins in 1856. Made about 200 dozen of goods. I was in business at this time with Abner A. Johnson, of Gloversville. Our firm-name was Place & Johnson, or Johnson & Place, I don't know which. Johnson is now dead. We purchased these skins in the bark-tanned state. Before making them into mittens and gloves we put fat liquor on them. We rubbed it on with the sponge. Put on the fat liquor in its natural state just as we got it from the mill. Treated these skins in the summer-time, in warm weather. We next packed the skins down in a box after putting on the fat liquor, then staked them out and cut them up into mittens and gloves. I should think they were both sheep and lamb skins. I do not remember whether they were shaved or unshaved skins. The effect produced on these skins by the application of fat liquor was to make them softer and make them tough.

Q. Anything else you think of beside making them softer and tougher?

A. I don't know as I think of anything else.

Q. State, if you know, whether or not these skins before treatment with fat liquor contained squeak, or were what is called "squeaky."

A. They did.

Q. How were they in regard to that after treatment with fat liquor?

A. Part of them did not have any squeak in, and some of them did.

Q. What part or class of skins was the squeak removed from?

A. From the thinnest ones. We sold the goods made from these skins. We made both mittens and gloves from these skins. Made some Plymouth gloves, and some Montpelier gloves, I think. What we call Montpelier is a larger-sized glove, with a button on. We treated these skins as we wanted to use them; perhaps fifty or one hundred skins
231 at a time. What we wanted to use the next day we dampened down the night before. We always put skins down the night before we wanted to use them. Putting on the liquor is dampening down. All we done after putting on the liquor was to pack them down; sometimes rolled them up; sometimes packed them down solid as we could; we would then take them from the box, staked them, and cut them up. After treating them in that way the skins were suitable for mittens and gloves. I think we next treated bark-tanned sheep and lamb skins for mittens and gloves in the spring of 1869; were perhaps some twenty-five dozen. I treated those by warming the liquor in a kettle to about blood-heat, sometimes a little more, and dipped the skins into it, stirred them around, left them

in about fifteen minutes or longer, or perhaps not so long, then took them out and spread them out smooth, and then hung them up to dry. When they were dry we dampened them, staked them out, and cut them up. We dampened them with soap-suds on the grain side with a sponge. The effect produced by the fat liquor on these skins was to make them soft and pliable.

Q. Anything else?

A. That "anything else" I don't understand.

Q. What effect, if any, was produced by the fat-liquor treatment of these skins as to the squeak?

A. They did not squeak after we put them through it.

Q. When next, if at all, did you treat bark-tanned sheep and lamb skins with fat liquor, in preparing them for mittens and gloves?

A. In the fall of 1869, as near as I can recollect, at Gloversville, at the same place, we treated the last. Treated considerable many that fall and winter; cannot tell how many; probably two or three hundred dozen skins. I treated these personally myself. I warmed the liquor the same as I did the last lot, and treated them in the same manner, and the effect was the same. And we sold the goods after they were made into mittens and gloves. These skins and the lot last spoken of belonged to I. V. Place and J. W. Place. I treated this kind of skins in the same manner more or less since that till 1871. I think the last lot I done was the forepart of 1871. All the skins I treated in this manner in 1869 and after that were the property of I. V. and J. W. Place. I did not personally treat all the skins that were treated by I. V. and J. W. Place; I. V. Place treated some in this manner. I. V. Place himself treated some. In treating these skins spoken of by me, I never heated the fat liquor to the boiling-point or near that; I never used any other ingredient with the fat liquor in this treatment; nothing but water.

Q. Has any person or persons treated bark-tanned sheep and
232 lamb skins with fat liquor for I. V. and J. W. Place except I. V. Place and yourself? And if so, state who, and when, and where.

(Objected to by plaintiff's counsel.)

A. Yes, sir; Samuel Dodge & Son, more or less for the last two years, at their shop at Gloversville.

Q. Do you know of any other person or persons treating bark-tanned sheep or lamb skins with fat liquor in Gloversville in 1869, or prior to that time? And, if so, state who, and when, and where.

(Objected to by plaintiff's counsel.)

A. Not to my own knowledge.

Q. State, if you can, whether bark-tanned sheep or lamb skins, rendered soft and pliable by some process or treatment, have been in the market in Gloversville and there used for the manufacture of mittens and gloves for any length of time; and, if so, for how long.

(Objected to by plaintiff's counsel.)

A. They have, more or less, for the last sixteen years, when I have been in Gloversville. During the first year I was in Wisconsin I was engaged in the manufacture of mittens and gloves, and after that in the mercantile business and forwarding. While there I dealt in mittens and gloves other than those manufactured by me.

Q. Did you buy them, or were they sent to you for sale?

(Objected to by plaintiff's counsel.)

A. I did not buy them; I sold them for my brother, Isaac V. Place.

Q. State whether or not, while you lived in Wisconsin, you received from Isaac V. Place, for sale, any mittens or gloves made from bark-

tanned sheep or lamb skins, made soft and pliable by some process or treatment; and, if so, what number or quantity, and when, as near as you can state it.

(Objected to by plaintiff's counsel.)

A. I did. I have no recollection of but one dozen; this was in September, 1858.

Q. State, if you can, by what process or treatment this one dozen was rendered soft and pliable?

(Objected to by plaintiff's counsel.)

A. I could not tell of my own knowledge; I can give my opinion.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. Were you a party defendant in the suit of this plaintiff against Isaac V. Place and John W. Place for an infringement of this patent, tried at Albany in October, 1870, and which resulted in a judgment for plaintiff?

A. I was.

Q. Was you at the time of that trial residing at Gloversville?

A. I was.

233 Q. Were you examined as a witness on that trial?

A. No, sir.

Q. Were you examined as a witness for defendant in the case of this plaintiff against Albert Klein for an infringement of this patent, tried at Utica in March, 1871?

A. I was.

Q. Did you there attend as a witness without payment of witness-fees?

A. I did.

Q. Was your brother Isaac V. Place also present during that trial?

A. He was.

Q. Was the fat liquor applied by you to the bark-tanned sheep and lamb skins in 1856, spoken of on your direct examination, applied in a warm or cold state?

A. I did not warm it; I applied it in its natural state, called cold state.

Q. Did you apply it with the sponge to one or both sides of the skin?

A. Applied it only on one side.

Q. Then you just dampened the skins on one side, did you?

A. I put the liquor on only on one side.

Q. Did you just dampen the skins on one side?

A. To the best of my recollection I only dampen them on one side.

Q. After putting on the fat liquor, as you have stated, you put the skins into a box together, and let them lay overnight, and the whole process together is what you call dampening them down, is it not?

A. Yes, sir.

Q. Are not all skins that are cut into mittens and gloves, as a general rule, dampened down in some way before cutting up?

A. They are not.

Q. What kind are not?

A. Oil-tanned fleshers.

Q. What other kinds, if any, can you mention that are not dampened down before cutting?

A. No other.

Q. On the trial at Utica, before mentioned, did the plaintiff have present specimens of leather treated or said to have been treated by his process?

(Objected to by defendants' counsel.)

A. Yes, sir; there were specimens there said to have been treated by his process.

Q. Did you there state in substance on your examination that this leather produced by you in 1856, before spoken of, was not as nice, or anything like it, as Russell's specimens there in court?

A. I don't remember exactly; I might have said it was not so nice.

Q. On your direct examination to-day, when asked by counsel what effect the application of fat liquor by you on those skins in 1856 produced, you did not think anything about the removal of the squeak, did you, until your attention was particularly called to that point?

A. I don't know as I did.

Q. In testifying on this point at Utica did you say anything at all about the squeak?

A. I don't remember.

Q. Can you positively swear that you made any portion of that leather produced in 1856 into Montpelier gloves?

A. I would not want to.

Q. Were the Plymouth gloves made from that leather a coarse class of gloves?

234 A. Why, yes, they were; they were not a fine class of goods, and of course must be a coarse class.

Q. After your return from Wisconsin in March, 1866, did you go into business with Isaac V. Place in the manufacture of mittens and gloves, and have you since continued with him in that business?

A. No, sir.

Q. How soon after your return from Wisconsin did you go in with him in the business of manufacturing mittens and gloves?

A. On the first of January, 1868.

Q. Since that time have you been in company with him in that business?

A. I have.

Q. Between the time of your returning from Wisconsin and going into business with your brother Isaac V. Place, in what business were you engaged?

A. Manufacturing of mittens and gloves, at Gloversville.

Q. Then the first bark-tanned sheep and lamb skins that you treated, or saw treated, with fat liquor, after the lot in 1856, were those treated by you in the spring of 1869?

A. I think they were.

Q. What time in the spring of 1869 were those treated?

A. I think it was in March.

Q. Where were this first lot in 1869 treated?

A. At my brother's mill.

Q. Did you treat any, or try any experiments, at your brother's house, or at any place other than your brother's mill?

A. No, sir.

Q. How many did you treat in this first lot in the spring of 1869?

A. I think in the neighborhood of 25 dozen.

Q. Now, when was the next lot treated by you or your brother with fat liquor?

A. In the fall of 1869; I cannot remember the time in the fall.

Q. Are you able to state whether you did or did not treat any in the summer of 1869?

A. I am not positive.

Q. How many did you and your brother Isaac V. Place treat with fat

liquor in the way you have described in the fall and winter of 1869? State as accurately as you are able.

A. In the neighborhood of 200 or 300 dozen; I cannot tell positively.

Q. Will you swear positively it was not as many as five hundred dozen?

A. No, I won't.

Q. Will you swear positively that it was not as many as six hundred dozen?

A. Yes, I will swear positively it was not.

Q. How many did you and your brother treat with fat liquor in the way you have described in the year 1870?

A. I don't know.

Q. State the number as near as you are able.

A. It is only guess-work; I should think we might have done two hundred dozen skins.

Q. Can you swear it was not three hundred dozen skins?

A. No, sir.

Q. Can you swear it was not four hundred dozen?

A. No, sir.

Q. Can you swear it was not five hundred dozen?

A. No, sir.

Q. Can you swear it was not six hundred dozen?

A. No, sir.

Q. Please fix some number that you are willing to swear it did not exceed, and the lowest number.

235 A. I am not willing to swear positively to any number.

Q. Then you are not willing to swear that you and your brother Isaac V. Place did not in the year 1870 treat with fat liquor, as you have described, as many as a thousand dozen bark-tanned sheep and lamb skins?

A. Yes, I am willing to swear to that.

Q. Will you swear you did not do eight hundred dozen?

A. I will.

Q. Will you swear you did not do seven hundred dozen?

A. No, sir.

Q. Down to what time in 1871 did you continue to treat bark-tanned sheep and lamb skins in the way you have described?

A. Till the forepart of February of that year.

Q. How many did you thus treat in 1871? State as near as you are able.

A. About fifty dozen.

Q. Are you willing to swear you did not treat more than that number in 1871?

A. Not positively.

Q. Please state a limit beyond which you are willing to swear you did not go in 1871?

A. One hundred dozen.

Q. Are you a defendant with your brother Isaac V. Place in a pending suit by this plaintiff for an infringement of this patent?

A. I don't know, sir, whether I am or not.

Q. Have not you and your brother Isaac V. Place been sued by this plaintiff since the former trial and judgment against you spoken of?

A. I had some papers served on me; never seen any complaint. I never knew whether it was for an infringement of this patent or not.

Q. Do you not understand that these papers served on you, to which you have just referred, are in a suit by this plaintiff against you and

your brother Isaac V. Place for an infringement of this patent, and that such suit is still pending?

A. No, sir.

Q. Then you mean to swear, do you, that you have never heard, and have no idea or understanding, that you and your brother have been sued a second time by Mr. Russell?

A. No, I don't mean to swear to any such thing.

Q. Then what do you mean to swear to on this point?

A. I mean to swear to the truth, and that is this: that I got some papers served on me to appear at Utica to answer certain questions relative to this Mr. Russell. I showed that paper to Isaac V., and he said he would attend to that, and I have never been informed what the complaint or charges were.

Q. What were these questions about that you referred to in these papers?

(Objected to by plaintiff's counsel.)

A. I don't remember.

Q. Have you been here before to-day while testimony has been taken before the commissioners.

A. I was here a while yesterday.

Q. Have you not been here before yesterday?

A. No, sir, I have not been here before yesterday.

Q. Do you know the fact, and have you known the fact, that
236 this examination has been in progress before the commissioners some 25 days, more or less?

(Objected to by defendants' counsel.)

A. I have heard that it had been in progress here for some time, but don't know how many days.

Q. Have you known or understood that your brother Isaac V. Place has been in attendance much of the time on this examination?

A. I knew he was out here somewhere, but did not know whether he was here or somewhere else. I knew he was away from home.

Q. Now, sir, have you not understood that he was in attendance here upon this examination?

(Objected to by defendants' counsel.)

A. I have.

Q. Have you known or understood that he has employed counsel and subpœnaed witnesses, one or both, in this case?

A. I don't know, and have not understood.

Q. Have you known or understood of his employing counsel or subpœnaed witnesses, in any manner, between him and Russell, or in Russell against him and yourself, since the judgment before spoken of against you?

A. I have so understood; I only know it from hearsay.

Q. What do you understand this matter in which your brother employed counsel was about?

(Objected to by defendants' counsel.)

A. All I know I heard he had employed Mr. Hale, of Albany, in that Utica trial.

Q. What did you suppose your brother was up here for in attendance on this examination so much?

(Objected to by defendants' counsel.)

A. You have now brought it to a focus where I can answer you. That has been a query in my mind. I have often asked him, but he don't tell me. I know nothing about it. He runs his own machine and I let him,

and I attend to my own business. I told him that I understood it was Dodge's suit, and was a query with me why he took such an interest in it.

Q. Have you subpœnaed any witnesses in this case?

A. No, sir.

Q. Do you mean to be understood as swearing that either you or your brother Isaac V. Place personally treated all the skins to which you applied fat liquor since you went into business with him in 1868?

A. All but one batch, as near as I can recollect.

Q. What and when was that one batch, and who treated it?

A. I don't know who treated them; it was done there at the mill; but I was not there at the time. Was a small batch of bark-tanned skins; was in 1869 or 1870. Done by some one that worked at the mill. I sent them there myself, and told some one to put them through, but don't remember who.

Q. Then when you or your brother were treating these skins you had no workman or employees assisting you?

A. We did.

Q. Who? Name them.

237 A. Charles B. Wessells, A. Johnson, and sometimes Joseph Ehrhart; no one else that helped; but were others around in the mill. Wm. B. Mills worked there one or two years, and was about there, and may have helped pile up skins, or saw it done. We did not rely on him.

Q. Since February, 1871, have you and your brother Isaac V. Place had bark-tanned sheep and lamb skins treated with fat liquor by Samuel Dodge & Son, these defendants?

A. We had a good many skins done there since, but whether they used fat liquor I don't know, as I did not see them do it.

Q. Did you see these skins after they were returned to you from Dodge's, the defendants?

A. I did.

Q. Did you testify on your direct examination, in substance, that Samuel Dodge & Son had treated bark-tanned sheep and lamb skins with fat liquor more or less for the last two years at their shop in Gloversville?

A. I might have said so; don't recollect exactly. I could not testify positively, as I did not see them do it.

(The latter part of last answer is objected to by plaintiff's counsel as not responsive to the question put, but insisted on by counsel for defendants.)

Q. If you swore on your direct, as specified in the last interrogatory, did you refer to skins which Samuel Dodge & Son treated for yourself and brother?

A. Yes, sir.

Q. Do you know, from what either Samuel Dodge or son have said to you, or otherwise, whether those skins were or were not treated with fat liquor?

A. No, sir.

Q. How many bark-tanned sheep and lamb skins have defendants treated for you and your brother since February, 1871? State as nearly as you are able.

A. I should think perhaps a thousand dozen.

Q. Can you swear it was not fifteen hundred dozen?

A. No, sir.

Q. Please state a number that you are willing to swear as a limit.

A. I am willing to swear it is not two-thousand dozen.

Q. And that is the lowest number you are willing to swear as a limit?

A. I would not like to swear positive below that.

Q. You stated on your direct examination that bark-tanned sheep or lamb skins rendered soft and pliable by some process or treatment have been in the market at Gloversville and there used for the manufacture of mittens and gloves for the last sixteen years. Please mention the first of such of which you have any knowledge and can now specify with any definiteness or particularity.

A. The first I saw was at David Spaulding's.

Q. State at what particular place in Gloversville.

A. At David Spaulding's place of business in Gloversville, where Sidney S. Plummer now lives, on Bleeker street. Was being made up in the shop.

Q. When was this?

A. In the summer of 1856.

238 Q. Who was present on this occasion?

A. David Spaulding; don't remember any one else. I saw bark-tanned gloves, Montpelier button-tops; Montpelier glove is a button-top.

Q. Is what passes in the trade and known as a Montpelier glove and what passes in the trade and is known as a button-top the same or different article?

A. I should call it the same.

Q. Are what is known as a Montpelier button-top and what is known as a button-top two different classes of goods?

A. Not if they are cut out of the same stock.

Q. Do you mean to swear that what passes and are known as Montpelier button-tops and what are known and pass as button-tops without the term "Montpelier" are not a different class of goods?

A. Well, I can't answer that question satisfactorily. I don't call them different if they are cut out of the same stock.

Q. I don't ask you what you call them, but how they are understood and called in the glove-making community?

A. Well, they call them both ways. In some shops they call them button-tops, and in some they call them Montpeliers.

Q. If you had an order for button-top gloves, would you fill it by what are known as Montpelier gloves?

A. No, sir.

Q. Would you fill it by what is known as botton-top gloves?

A. I would if the order was for button-top gloves.

Q. Is it or is it not true that Montpelier gloves are made of a coarser and heavier material than the class of gloves known as botton-tops, and with which you would fill an order for button-tops?

A. In buck goods it is true, but in kid goods it is not.

Q. On this occasion at Spaulding's shop, what examination, if any, did you make of the gloves?

A. I looked at them, and felt of the leather.

Q. How many pairs can you swear you looked at and felt on that occasion?

A. I looked at a great many more than I felt of. I only felt of a pair or two.

Q. Did you see the leather prepared of which these were made?

A. I did not.

Q. Have you any personal knowledge how it was prepared?

A. I have not.

Q. State the next time that you saw the bark-tanned softened leather you speak of.

A. I saw it in Mr. Russell's shop, the plaintiff, on Main street in Gloversville. I should think it was in the year 1856 or 1857; am not positive, but it was one of the two years. It was in the basement of a house; the basement was used as a cutting-shop; was west of the Fulton County Bank. I think it was in the summer-time, in warm weather. Mr. Russell was present; don't remember of anybody else. I saw bark-tanned button-top gloves there. I should think I saw as many as three or four dozen. I don't think I took hold or examined more than one glove or one pair of sample gloves, to see how nice it was. I did
239 not see this leather prepared. I have no personal knowledge how it was prepared.

Q. When and where was it you next saw this kind of leather? State particularly.

A. My impression is the next I saw was after I came back from the West, in the laying-off shops in Gloversville.

Q. Specify the first shop you can positively swear to have seen it in after your return from the West; whose it was, where located, and when it was.

A. I can't tell; I don't remember the names of the parties that owned the laying-off shops. It was a shop just past the corner on Main street, up-stairs, but don't know whose it was. I think it was the same summer I came back from the West—was in the summer of 1866 or 1867; don't remember which.

Q. Who was present?

A. I cannot tell; parties were at work there.

Q. How long were you there on that occasion?

A. A very few minutes.

Q. What kind of gloves can you swear positively as having seen on that occasion?

A. I think I saw bark-tanned gauntlets.

Q. Can you swear positively to having examined any of the gloves on that occasion; and, if so, how many?

A. No, sir; I don't think I examined any.

Q. Have you any personal knowledge as to how that leather was prepared?

A. No, sir.

Q. State the next time and place where you saw this kind of leather, that you now remember?

A. I saw it in other laying-off shops.

(This answer is objected to by plaintiff's counsel as not responsive to the question, but insisted upon by counsel for defendant.)

Q. Can you specify any other shop or place where you saw this kind of leather after the time and place last spoken of?

A. Yes, sir.

Q. Specify it, then.

A. I saw it in Mr. Hyman's laying-off shop.

Q. When?

A. I think it was in 1869. I don't remember the time in 1869.

Q. Can you specify any other time or place prior to 1869 other than those you have already specified?

A. I don't know that I can.

Q. While you were in Wisconsin did your brother Isaac V. send you many goods for sale?

A. Not a great many.

Q. About how many times, and covering what period of time, did he send you goods?

A. In the fall of 1858 I had goods from him; that is all I remember of—only this one occasion.

Q. Is that what you meant on your direct examination when you stated that while in Wisconsin you dealt in mittens and gloves other than those manufactured by you?

A. No, sir; that is not what I meant altogether.

Q. Then you had goods for sale from other' besides Isaac V.?

A. Yes; I had from others.

On his redirect examination by defendants' counsel the witness further testified as follows:

240 Q. How is oil-dressed mitten and glove leather dampened down?

A. Generally, water sprinkled on with the brush.

Q. In putting on fat liquor with the sponge on the bark-tanned sheep and lamb skins, as stated by you, what quantity of liquor did you put on them?

(Objected to by plaintiff's counsel.)

A. I just dampened them down calculated to get it through the skin, just as you dampen any skins.

Q. For what purpose did you apply the fat-liquor.

(Objected to by plaintiff's counsel.)

A. To make them soft.

Q. Did the fat liquor applied by you with the sponge penetrate through the skins? State, if you know.

(Objected to by plaintiff's counsel.)

A. It did.

Q. State, if you know, whether or not David Spaulding, at whose shop you state you saw soft and bark-tanned leather, manufactured mittens and gloves extensively or otherwise, at that time, and whether he is now living or dead.

(Objected to by plaintiff's counsel.)

A. He did manufacture extensively, and have understood he was now dead.

Q. On what street was Mr. Russell's shop, where you saw the bark-tanned leather or gloves in 1856 or 1857?

A. On West Fulton street.

Q. I understood you to state on your cross-examination that it was on Main street; can you explain why you so stated?

A. I don't think I did so state. If I did I misspoke myself; I did not mean so.

On his recross-examination by plaintiff's counsel the witness further testified as follows:

Q. In putting on the fat liquor to the skins in 1856, did you apply about the same quantity to every skin?

A. No, sir.

Q. Do you mean to be understood as swearing that fat liquor applied to the skins at that time penetrated entirely through the skin, until they had been packed down and thus lain for a while?

A. No, sir.

Q. Do you think that in the case of those skins which had the squeak in them, after your treatment, as you have testified, were thoroughly penetrated through and through by the fat liquor?

A. Yes; I think what I put on penetrated and dampened them through.

A. For what purpose are skins generally dampened down before cutting?

A. To get all the leather out, so it will give and stay there; stretch out or spread out and give it more surface.

Q. Does or does not the dampening of skins have the effect of rendering them softer and more pliable, so that they will yield and
241 stretch out, and thus give surface to the whole leather?

A. Yes, sir.

On his further redirect examination by the defendants' counsel, the witness further testified as follows:

Q. In preparing the skins for cutting, what is done to them next after dampening them down?

A. Put in a box and packed down, and then they are put on a perch and staked—stretched out.

On reading over the minutes, the last witness makes the following correction in his answer to the question as to whether any person or persons treated bark-tanned sheep and lamb skins with fat liquor for I. V. and J. W. Place, etc., in which he answered, "Yes, sir; Samuel Dodge & Son, more or less, etc.; that he did not mean to swear he had any personal knowledge as to whether Dodge & Son treated said skins with fat liquor.

JOHN W. PLACE.

Subscribed and sworn this 20th day of December, 1872, before me.

J. WENDELL,
Special Examiner.

SAMUEL DODGE, senior, a witness produced, sworn, and examined in his own behalf, testified as follows:

Q. Are you one of the defendants in this case?

A. I am sixty-one years of age. I was born in England, at Yeovil. I have been in this country from 27 to 28 years. I now reside at Gloversville. I have resided there from 20 to 21 years; just before that I resided in the village of Johnstown, in Fulton County. Before coming to this country I served my time in the glove business, all parts and branches except cutting. I served an apprenticeship of seven years in coloring and finishing kid-skins and sheep-skins, and served seven years more at beam-work, called dressing and staining. The first seven years I served at Yeovil; after that, part of the last seven years at London, and part at Stoke. My business while residing at Johnstown was beam-work, coloring and finishing, or any other work that my employer had to do. Since my residence in Gloversville my business has been anything the manufacturers desired me to do by way of dressing skins and getting up the stock for gloves. Samuel Dodge, jr., the other defendant, is my partner in my business, and has been probably about five years. We carry on the business of preparing leather for
242 mittens and gloves quite extensively now, and have done so for seven or eight years, and employ from ten to twenty-five hands in our business. I give the business my personal attention, and have always done so. I also learned the art of tanning leather; that is part of my business, tanning in alum and salt, and in bark; that is all. I learned that also in England; is a part of my trade. I tanned sheep-skins and lamb-skins in bark, and sometimes goat-skins; not often, very seldom.

Q. Do you know bark-tanned sheep and lamb skins when you see them?

A. I do.

Q. How long have you known them?

A. For forty-five years.

Q. Are you acquainted with an article used in the dressing of leather for mittens and gloves known as fat liquor?

(Objected to by plaintiff's counsel.)

A. I am.

Q. How long have you been acquainted with it?

A. For the last fifty years.

Q. If you have at any time used fat liquor in the treatment of bark-tanned sheep and lamb skins for the manufacture of gloves or mittens, state when, and where first, in this country.

A. First in the village of Johnstown, in Fulton County; was twenty-three or twenty-four years ago.

Q. For whom?

A. Jonathan Ricketts.

Q. How many?

A. I should judge from three hundred to four hundred dozen. I cannot tell exactly. Some of them were bark-tanned fleshers; some had the grain on.

Q. State, if you remember, what time in the year you treated those.

A. Some in the winter-time, some in the spring of the year.

Q. Did you receive the skins for treatment in the bark-tanned state?

A. I did.

Q. State particularly the manner in which you treated them with fat liquor.

A. I selected my skins; I take the fat liquor; I would have a tub and put my warm water in; then I would add what fat liquor I was a mind into that; then I put my skins in, stir them up, then get on them and tread them with my naked feet till they were perfectly saturated through; I then took them out and hung them out to dry. After they was dry, I staked them out—them that wasn't soft enough I put them back again the same way as I had before; then I would take them out and dry them down again, stake them out, and finish them; that is all. I had no more to do with them after that.

Q. State whether in the treatment of these skins you used anything beside fat liquor and water.

A. No, sir.

Q. State how warm you made the liquor.

A. A little over blood-heat.

Q. You state you selected the skins out. Please explain what you mean by selecting them out.

A. Because fat liquor won't do for them all, that alone.

Q. State particularly how you selected them out, and what you done with the different selections.

A. Some of the skins were too heavy, and what we call bark-
243 bound—tanned in too warm liquor. I dissolved some carbonate of ammonia and put the skins into it, then take them out and hang them out, dry them down; then I mix up a liquor for them of oil and eggs and warm water, trod them down in it, then hang them out to dry. The others I treated as stated before.

Q. What number or portion of these bark-tanned sheep and lamb skins, which you treated for Ricketts did you treat with ammonia, oil, and eggs, and what number or portion with fat liquor alone? State as near as you can.

A. About one-fourth with ammonia, oil, and eggs, and the other three-

fourths with fat liquor alone. That is as near as I can state it; I don't know as that is exact.

Q. For what purpose did you treat these skins with fat liquor?

A. To make them soft, and to remove the squeak.

Q. What effect, if any, was produced by the application of fat liquor upon these skins?

A. It made them soft and pliable, and fit for mittens and gloves.

Q. Anything else?

A. Removed the squeak.

Q. State, if you know, what use was made of these skins after treatment by you as you have stated.

A. I understand they were cut into mittens and gloves. I don't know, I did not see them. I heard them that had no grain on were sold for Indian-tanned gloves.

(Plaintiff's counsel moves to strike out the last answer as incompetent and improper, being mere hearsay.)

Q. Were these skins treated by you with fat liquor, for Ricketts, shaved or unshaved at the time of treatment?

A. Unshaved.

Q. When next, if at all, after that time did you treat bark-tanned sheep and lamb skins with fat liquor, and for whom, where, and how did you treat them?

A. Somewhere in the neighborhood of twenty years ago, at Gloversville; that was for Henry and Allen Churchill. They were brought to me to soften, and to finish and to buff them. I brushed it on with the brush. I hung them out. When they were dry I took them in, staked them out, and finished them and buffed them.

Q. What effect was produced on these skins by the application of fat liquor?

A. It made them soft.

Q. State how you prepared the liquor for these?

A. I got some fat liquor and put some water with it.

Q. State the number of this lot of skins, as near as you can.

A. Somewhere in the neighborhood of nine or ten dozen.

Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone, and where, for whom, what quantity, and in what manner did you treat them?

A. I done some for David Spaulding next, ten dozen; them I did not finish. I trod the fat liquor into them, hung them up and dried them, took them back, trod them up with more liquor the same way,
244 and staked them out, and took them home; made them soft, removed the squeak.

Q. State as near as you can the time when and the place where.

A. About 20 years ago, on Main street in Gloversville, the higher end of Gloversville—towards Kingsboro'.

Q. At what particular place or building?

A. At the shop that Josiah Farthing and me builded.

Q. State how you prepared the liquor applied to these skins.

A. I put fat liquor into warm water, and trod it into them.

Q. How did you get the liquor and the skins together, or where did you put the liquor and where the skins?

A. The liquor was put into the tub, and the skins were taken, put into the liquor in the tub, stirred up, getting into it, trod into it, taken out and hanged up.

Q. When next, if at all, did you treat bark-tanned sheep or lamb skins

with fat liquor alone; where, for whom, the quantity, and in what manner did you treat them?

A. About ten dozen I done for Edward Dunson in my shop; I took them, put them in a tub with the liquor, stirred them up and trod them, hung them out and dried them, brought them back, treated them the same way again, then staked them out after they were dry.

Q. When was this?

A. About 16 or 17 years ago.

Q. How did you prepare the liquor for these?

A. Warm water and fat liquor.

Q. Were these sheep or lamb skins?

A. Lamb-skins.

Q. What effect, if any, was produced on these skins by the treatment of them as you have stated?

A. Made them soft, taken the squeak out, fit for gloves.

Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor; where, for whom, and the quantity?

A. The same year I done about six dozen for Samuel Gilchrist; was on a back street right by Alanson Judson's shop.

Q. In what town or village?

A. At Gloversville.

Q. How did you prepare the liquor for these, and how did you treat them?

A. Fat liquor and warm water, and brushed it on them with the brush, hung them out to dry, taken them in and staked them, and finished them and buffed them off.

Q. What effect was produced on these by the application of fat liquor as you have stated?

A. Made them soft.

Q. Anything else?

A. No.

Q. When next, if at all, did you treat bark-tanned sheep and lamb skins with fat liquor; where, for whom, and the quantity?

A. Fifteen dozen I done for Chapman and Warren; in Amsterdam they live.

Q. Where?

A. At Gloversville I done it; at my shop.

Q. When?

A. I should judge about fifteen years ago.

Q. State how you prepared the fat liquor for these and how you applied it to the skins.

A. I took some warm water, put it into a tub, put fat liquor to it, put the skins in, stirred them with my arms first, and then trod them, hung them out to dry 'em, brought them in, treated them in the same
245 way again.

Q. State, if you know, whether these were sheep or lamb skins.

A. They were sheep and lamb together.

Q. State the effect of this treatment.

A. I did not stake them out.

Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone; where, for whom, and what quantity?

A. Ten dozen I done for Logan & Chapman, of Amsterdam.

Q. Where did you do these?

A. Done them in my own shop, on Main street.

Q. Main street, where?

A. At Gloversville.

Q. When?
A. Somewhere about 15 years ago.
Q. How did you prepare the liquor for these and how did you apply it?
A. Put warm water in the tub, fat liquor with it, stirred the skins up in it and trod them, hung them and dried them, taken them and treated them the same way again, and staked them out.
Q. Were these sheep or lamb skins?
A. Sheep and lamb together.
Q. What effect was produced on these by the application of fat liquor?
A. Made them soft, pliable, fit for gloves and mittens.
Q. When next, if at all, did you treat that class of skins with fa liquor alone?
(Objected to by plaintiff's counsel.)
A. For Daniel B. Judson, about 15 years ago.
Q. Where did you treat these?
A. In my shop.
Q. In your shop, where?
A. On Main street, at Gloversville.
Q. How many did you treat for Judson?
A. Twelve or fifteen dozen.
Q. State how you treated these.
A. Put warm water in the tub, put the fat liquor into the water, stirred up the skins, trod them, hung them out to dry them, brought them in, treated them the same way again, staked them out and finished them.
Q. Where were the skins when you trod them and stirred them up?
A. In my shop.
Q. Where in your shop?
A. In what we call the beam-shop.
Q. State in what particular place in your beam-shop these skins were when you stirred them up and trod them.
A. About in the middle of the room, in the tub.
Q. What effect, if any, was produced on these skins by the treatment with fat liquor as stated by you?
A. It made them soft and pliable, fit for mittens and gloves.
Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone; where, and for whom?
A. I done one lot for Philander and David Heacock; was about ten dozen, I think; in my shop in Gloversville.
Q. When?
A. Somewhere about 14 years ago.
Q. How did you prepare the liquor and how apply it to these skins?
A. Put warm water in the tub, put the fat liquor to it, put the skins in it, stirred them up, trod them, taken them out, hung them up and dried them down, taken them in and treated them in same way
246 again, staked them out, and finished them.
Q. What effect was produced, if any, to these skins by the treatment with fat liquor as you have stated?
A. Made them soft and pliable, fit for mittens and gloves.
Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone; where, and for whom?
A. I think for Mr. Nickerson—I forget what his given name is—about ten dozen, about thirteen years ago. I treated them the same as I did the last lot spoken of, all but finishing them, at my shop at Gloversville.
Q. What effect was produced by this treatment upon these skins?
A. It made them soft and pliable, fit for mittens and gloves.
Q. State when next, if at all, you treated bark-tanned sheep or lamb

skins with fat liquor; where, for whom, the quantity, and manner of treatment?

A. Somewhere about four or five years ago, at my shop in North Elm street at Gloversville, for Daniel B. Judson, 25 dozen. I drew them into water and fat liquor, taken them out of that, run them into a drum, taken them out, hung them out and dry them, taken them back. Go through the same process—hanged them out and dried them, staked them out; that is all.

Q. State particularly how you prepared the liquor for these.

A. About two barrels of warm water, so I could bear my hand in it, put the fat liquor into it, stirred them up with my arms; that is all.

Q. In what condition was the fat liquor when you put it into the tub with the water?

A. The same as we got it from the mill.

Q. Describe particularly the mode of treatment of these skins by you.

A. Taken the warm water, put it into a tub, put fat liquor into it, stirred them up; take them out of that tub, put them in the drum, then turn on the steam and let the drum go; when they are run sufficient, take them out and hang them out, dry them, bring them in again, put them through the same process as before, then hang them out and dry them down again, take them in and stake them; that is all I can answer to that question, as to that lot of skins.

Q. What effect was produced by this mode of treatment upon this lot of skins, if any?

A. It made them soft, pliable, fit for mittens and gloves.

Q. Please describe how this drum is constructed.

(Objected to by plaintiff's counsel.)

A. It is a large frame, with pegs inside about the size of your wrist; is about twelve feet in diameter; is a door in it, so as we can put the skins in and then put on the door, hang the door, and then turn on the steam, and it revolves around; that is all.

Q. Is there anything put on or applied to the skins while in the drum?

A. No, sir.

Q. For what purpose do you put them into the drum?

A. To beat them open and render them soft.

247 Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor?

A. Four years ago.

Q. Where?

A. At my shop in Gloversville.

Q. For whom?

A. Daniel B. Judson.

Q. How many?

A. About one hundred dozen. I tanned them myself.

Q. How tanned them?

A. With tan-bark.

Q. State particularly how you prepared the liquor for these.

A. I made my own fat liquor with oil, soap, sal-soda. I weakened it down with warm water, then put the skins into it.

Q. What kind of oil did you use?

A. Neat's-foot oil.

Q. What kind of soap?

A. Bar soap.

Q. State particularly how you treated these skins.

A. Weakened my liquor down with warm water, put the skins into it, stirred them up, put them into a drum and run them, took them out

Q. When?
A. Somewhere about 15 years ago.
Q. How did you prepare the liquor for these and how did you apply it?
A. Put warm water in the tub, fat liquor with it, stirred the skins up in it and trod them, hung them and dried them, taken them and treated them the same way again, and staked them out.
Q. Were these sheep or lamb skins?
A. Sheep and lamb together.
Q. What effect was produced on these by the application of fat liquor?
A. Made them soft, pliable, fit for gloves and mittens.
Q. When next, if at all, did you treat that class of skins with fa liquor alone?
(Objected to by plaintiff's counsel.)
A. For Daniel B. Judson, about 15 years ago.
Q. Where did you treat these?
A. In my shop.
Q. In your shop, where?
A. On Main street, at Gloversville.
Q. How many did you treat for Judson?
A. Twelve or fifteen dozen.
Q. State how you treated these.
A. Put warm water in the tub, put the fat liquor into the water, stirred up the skins, trod them, hung them out to dry them, brought them in, treated them the same way again, staked them out and finished them.
Q. Where were the skins when you trod them and stirred them up?
A. In my shop.
Q. Where in your shop?
A. In what we call the beam-shop.
Q. State in what particular place in your beam-shop these skins were when you stirred them up and trod them.
A. About in the middle of the room, in the tub.
Q. What effect, if any, was produced on these skins by the treatment with fat liquor as stated by you?
A. It made them soft and pliable, fit for mittens and gloves.
Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone; where, and for whom?
A. I done one lot for Philander and David Heacock; was about ten dozen, I think; in my shop in Gloversville.
Q. When?
A. Somewhere about 14 years ago.
Q. How did you prepare the liquor and how apply it to these skins?
A. Put warm water in the tub, put the fat liquor to it, put the skins in it, stirred them up, trod them, taken them out, hung them up and dried them down, taken them in and treated them in same way
246 again, staked them out, and finished them.
Q. What effect was produced, if any, to these skins by the treatment with fat liquor as you have stated?
A. Made them soft and pliable, fit for mittens and gloves.
Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor alone; where, and for whom?
A. I think for Mr. Nickerson—I forget what his given name is—about ten dozen, about thirteen years ago. I treated them the same as I did the last lot spoken of, all but finishing them, at my shop at Gloversville.
Q. What effect was produced by this treatment upon these skins?
A. It made them soft and pliable, fit for mittens and gloves.
Q. State when next, if at all, you treated bark-tanned sheep or lamb

skins with fat liquor; where, for whom, the quantity, and manner of treatment?

A. Somewhere about four or five years ago, at my shop in North Elm street at Gloversville, for Daniel B. Judson, 25 dozen. I drew them into water and fat liquor, taken them out of that, run them into a drum, taken them out, hung them out and dry them, taken them back. Go through the same process—hanged them out and dried them, staked them out; that is all.

Q. State particularly how you prepared the liquor for these.

A. About two barrels of warm water, so I could bear my hand in it, put the fat liquor into it, stirred them up with my arms; that is all.

Q. In what condition was the fat liquor when you put it into the tub with the water?

A. The same as we got it from the mill.

Q. Describe particularly the mode of treatment of these skins by you.

A. Taken the warm water, put it into a tub, put fat liquor into it, stirred them up; take them out of that tub, put them in the drum, then turn on the steam and let the drum go; when they are run sufficient, take them out and hang them out, dry them, bring them in again, put them through the same process as before, then hang them out and dry them down again, take them in and stake them; that is all I can answer to that question, as to that lot of skins.

Q. What effect was produced by this mode of treatment upon this lot of skins, if any?

A. It made them soft, pliable, fit for mittens and gloves.

Q. Please describe how this drum is constructed.

(Objected to by plaintiff's counsel.)

A. It is a large frame, with pegs inside about the size of your wrist; is about twelve feet in diameter; is a door in it, so as we can put the skins in and then put on the door, hang the door, and then turn on the steam, and it revolves around; that is all.

Q. Is there anything put on or applied to the skins while in the drum?

A. No, sir.

Q. For what purpose do you put them into the drum?

A. To beat them open and render them soft.

247 Q. When next, if at all, did you treat bark-tanned sheep or lamb skins with fat liquor?

A. Four years ago.

Q. Where?

A. At my shop in Gloversville.

Q. For whom?

A. Daniel B. Judson.

Q. How many?

A. About one hundred dozen. I tanned them myself.

Q. How tanned them?

A. With tan-bark.

Q. State particularly how you prepared the liquor for these.

A. I made my own fat liquor with oil, soap, sal-soda. I weakened it down with warm water, then put the skins into it.

Q. What kind of oil did you use?

A. Neat's-foot oil.

Q. What kind of soap?

A. Bar soap.

Q. State particularly how you treated these skins.

A. Weakened my liquor down with warm water, put the skins into it, stirred them up, put them into a drum and run them, took them out

and hanged them out, dried them down, brought them back, and went through the same process that I did before; hung them out and dried them; when dry taken them in and staked them.

Q. About how long did you leave these in the liquor each time?

A. About fifteen minutes.

Q. Were these skins shaved or unshaved when treated by you?

A. Shaved.

Q. Where and by whom were they shaved?

A. With my hands, and with my men, at Gloversville, at my shop on North Elm street.

Q. What effects, if any, were produced upon these skins by this treatment?

A. It lets them out; takes off all the rough; makes them more pliable.

Q. Anything else?

A. It makes them thinner.

Q. When next did you treat bark-tanned sheep and lamb skins with fat liquor?

A. About two years ago.

Q. How frequently have you treated that kind of skins with fat liquor since that time?

A. Every week.

Q. State, as near as you can, how many per week for the past two years.

A. According to my books about 40 dozen a week.

Q. Has your treatment of bark-tanned sheep and lamb skins for two years past with fat liquor been the same, or substantially the same, in each instance?

(Objected to by plaintiff's counsel.)

A. Yes.

Q. In the treatment of bark-tanned sheep and lamb skins with fat liquor by you and your firm at Gloversville for two years last past, state particularly and in detail how you prepared the liquor and how you treated these skins with it.

A. Took a large tub, put in some cold water, taken warm water out of my other tub, filled them up about three parts full till it was warm enough so I could bear my hands in it, then put the fat liquor in, and then it was fit for use. I put the skins in, stirred them down, pushed them down, take them out, fling them down on the floor, and put some more skins in the same way; then fling those down, take them up, put them in the drum, take a pail or two pails of the same liquor,
248 throw it on them in the drum, take them out therefrom, hang them out and dry them; when they are dried take them in, go through the same process, hang them up and dry them, take them in and stake them; that is all.

Q. State the condition of the fat liquor when put in the tub, and where you procured it.

A. Sometimes I make it my ownself; most times I have it from Johnson's mill or Christie's. I try if I can to get the first running of the liquor.

Q. The condition of the liquor when you put it in the tub, as to whether in a warm or cold state?

A. Cold.

Q. In what cases do you make the fat liquor yourself, and how do you make it?

A. Sometimes the skins are tanned with extract of bark; there is too

much alkali in the fat liquor I get to the mill; I dasn't to use it because it cuts the color and makes them motley; then I makes my own fat liquor my ownself; neat's-foot oil, sal-soda, and soap.

Q. And what did you do with these skins, if anything, when you put them into the drum?

A. Run them, then take them out when they are run sufficient, then hang them out on the lines.

Q. Has any person in your employ treated bark-tanned sheep or lamb skins with fat liquor, or has such treatment been applied wholly by yourself and son, Samuel Dodge, jun., within the last four years?

A. There is one man, whose name is John O'Neil, who has worked with me.

Q. Who has prepared the liquor at your shop for this treatment?

A. The main time I do it myself; if I don't do it myself I give John O'Neil instructions. I am there with him.

Q. In preparing fat liquor for the treatment of bark-tanned sheep or lamb skins, state whether or not you ever heated it to or near the boiling-point, or ever used any fat liquor so heated on bark-tanned sheep or lamb skins, except on two or three skins treated for use as exhibts on the trial at Utica between Russell and Klein.

A. No, sir.

Q. State whether or not you ever used fat liquor that had been heated to or near the boiling-point on bark-tanned sheep or lamb skins, except upon two or three skins treated for use as exhibits on the trial mentioned in the last preceding question.

A. I never did, except for use on that trial.

Q. Has any person when in your employ, or in the employ of your firm, ever heated fat liquor to or near the boiling-point for treatment of bark-tanned sheep or lamb skins, or used it when so heated, or after it had been so heated, in the treatment of such skins, or has your partner, S. Dodge, jr., ever done so, unless it be upon the few skins as exhibits on said trial at Utica?

A. No, sir.

Q. In the treatment of bark-tanned sheep and lamb skins, in your business or otherwise, with fat liquor, have you, your partner,
249 workmen, or servants ever used with the fat liquor, in the treatment of such skins, soap, salt, sal-soda, Venetian red, or either of them, except in the instances when you used soap and sal-soda in making the fat liquor yourself?

A. No, sir.

Q. Have you, or any member of your firm, or any servant or employee of yours or said firm, at any time used soap, sal-soda, salt, and fat liquor, intermingled or mixed together, in the treatment of bark-tanned sheep or lamb skins?

A. No, sir.

Q. Have you or your partner or employees ever used in your business, in the treatment of bark-tanned sheep or lamb skins, either salt, sal-soda, or soap, or any two of them, with fat liquor mixed together; and if so, in what cases and under what circumstances?

A. No, sir; I used soap alone, but not with fat liquor.

Q. In preparing the fat liquor for treatment of bark-tanned sheep or lamb skins in your business, how was the cold and hot water conveyed into the tub used in treating the skins, and in what order was the cold and hot water put into the tub?

A. The cold water was run through a trough from the tank into the tub. Hot water was dipped out with pails and put into the tub where

the cold water was. After we got the tub about three parts full we put the fat liquor in; was put in with pails. Sometimes we put in seven or eight pails; sometimes we might put in ten pails if the liquor is poor.

Q. State as near as you can the size of this tub, or the number of barrels it holds.

A. It might hold six or seven barrels; wouldn't say; I never measured it.

Q. State what quantity, in your judgment, this tub will hold.

A. Six barrels.

Q. How much cold water did you put in the tub at each of the several times you prepared the liquor?

A. About half full of cold water.

Q. Where is this tub, in what room is it now situated?

A. It is called the splitting-shop.

Q. How long has it been used in that room?

A. I have always used it there since I have built the shop, from seven to eight years.

Q. Did you at any time treat bark-tanned sheep or lamb skins, with fat liquor or otherwise, in a tub in any other room or building on your premises in Gloversville—I mean, the premises now occupied by you on North Elm street?

A. No, sir.

Q. Was there at any time, to your knowledge, bark-tanned sheep or lamb skins treated with fat liquor on your premises, or the premises of your firm in Gloversville, by any person or persons in a room in the wood-shed, or in one part of the wood-shed building?

A. No, sir.

Q. Has there been any bark-tanned sheep or lamb skins treated with fat liquor by you or by any other person or persons, to your knowledge, on your premises or the premises of your firm on North Elm street at any time, except such as were treated in the tub in the splitting-room?

A. No, sir.

Q. How long have you occupied, for the purposes of your business, the premises on North Elm street at Gloversville?

A. Eight or nine years.

Q. During that time have you or your firm occupied or used any other premises for the purpose of your business than those on North Elm street, or have you or has your firm during that time treated or dressed skins of any kind at any other place?

A. I have used my old shop, occasionally, situated on Main street.

Q. Any other place?

A. No, sir.

Q. State whether or not your old shop on Main street adjoins your premises on Elm street.

A. It does.

Q. How far is your old shop from your shops on Elm street?

A. About twenty rods.

Q. How many shops or buildings have you on Elm street which are used in your business of dressing leather?

A. Four.

Q. Four separate buildings?

A. No.

Q. How many separate buildings?

A. Three.

Q. Is there on these premises a building known as a wood-shed or coal-house?

A. Yes.

Q. Does that connect with another building, or is there a space between; and if a space, how much?

A. About four feet.

Q. State the size of this wood-shed or coal-house building.

A. About 55 feet long, twelve feet wide, and one story high.

Q. Is that building or any part of it enclosed, the sides or ends; and if so, what part?

A. Both ends is enclosed—the ends are. The middle part of it is made into a coal-house, and a drive-way with two sliding doors—what is called a tan-shop.

Q. Is there a room done off in any part of that building; and if so, what part?

A. Nothing but the drive-way.

Q. Do you know Frederick S. Green, who was sworn as a witness on this trial?

A. Yes.

Q. Was he at any time in your employ, or in the employ of your firm, in your business carried on at the shops on Elm street; and if so, when, how long, and what did he work at?

A. He was; he did anything I wanted him to do; worked about two years, and left a little over a year ago.

Q. Did you ever use, or was there ever used, to your knowledge, by any other person or persons, any fat liquor upon bark-tanned sheep or lamb skins, in this wood-shed or coal-house building, or any part of it?

A. No, sir.

Q. Did you ever take, cause, or direct to be taken, or have you any knowledge that any other person took or caused to be taken, two barrels or any other quantity of fat liquor into this wood-shed or coal-house building, or into the tan-room, or any other part of that building?

A. Yes; there is where I keep it in barrels.

Q. Did you empty or assist in emptying, or have you any knowl-
251 edge that any barrels of fat liquor or any fat liquor was at any time emptied or put into a tub in this wood-shed or coal-house building, or any part of it?

A. I have; when the barrels would leak they were emptied out and put in a tub to keep from wasting away.

Q. Did the witness Frederick S. Green at any time carry or bring into this wood-shed or coal-house building or any part of it a number of pails of hot water, or any hot water whatever, hand it to you, and you empty it into the tub with the fat liquor?

A. He brought me hot water there when I was tanning. He brought hot water there and put it into the tan-tub when I was leeching my bark. And he brought me hot water so as the soap and water I had there before so as to put hot water into the tub to prepare the liquor for bark-tans for shaving.

Q. Of what was this liquor composed?

A. Common bar-soap dissolved in water; that is all.

Did he (Green) ever bring into that room or building hot water, which you emptied into the tub with fat liquor?

A. No, sir.

Q. Did you ever, at any time, prepare or aid in preparing in this wood-house or coal-shed building, or any part of it, fat liquor for the treatment of bark-tanned sheep or lamb skins, or did you ever treat or

aid in treating bark-tanned sheep or lamb skins in that building or any part of it, or have you any knowledge that any other person or persons did so?

A. I have not.

Q. State, if you are able, what effect was produced upon the several lots of bark-tanned sheep and lamb skins treated by you with fat liquor, as mentioned by you in your evidence, as to the squeak in the skins.

A. Removed it.

Q. State how long ago, and the time, as near as you are able, when you first manufactured fat liquor in this country, as you have stated.

A. Twenty-seven years.

Q. State, as near as you are able, how frequently you have manufactured fat liquor since that time.

A. Every four weeks.

Q. State whether or not you have prepared it substantially the same in each instance.

(Objected to by plaintiff's counsel.)

A. I prepared it the same, sometimes with different kinds of oil.

Q. What different kinds of oil did you use in preparing it?

A. Palm-oil sometimes, sometimes the best sperm-oil, neat's-foot oil; that is all.

Q. State, as specifically as you are able, how you prepared the liquor manufactured by you in each instance.

A. One bar of soap, one gallon of oil, and one pound of sal-soda; dissolve the sal-soda in a gallon of water, put it in along with the oil, beat it up, bar of soap, put two gallons of water with it, boil it till it is dissolved, then put it altogether in a vessel; that is all.

Q. Upon what kind of skins have you generally used the fat liquor manufactured by you as you have stated?

A. On kid-skins.

Q. How were kid-skins tanned?

252 A. Some in alum and salt and eggs, some in bark.

Q. Are these kid-skins mostly sheep and lamb skins?

(Objected to by plaintiff's counsel.)

A. They are.

Q. State, if you know, the effect produced upon the skins by the application of the fat liquor manufactured by you.

A. It changed the color, made them soft and silky.

(The witness here asks permission to make the following correction in his testimony as to the time when he dressed the one hundred dozen skins for Daniel B. Judson, and now says that it was in April, 1869. I ascertained this on Saturday, by looking on my books. I examined them on Saturday last, after the close of my last evidence.)

Q. Did you learn from an examination of your books on Saturday last the number of bark-tanned sheep and lamb skins you treated for Daniel B. Judson about that time? and if so, state the number.

(Objected to by plaintiff's counsel, on the ground, in addition to other objections, that the books referred to are not produced before the examiner on this examination.)

A. I tanned 300 dozen for him that were brought there all at one time, but I did not tan them all at once.

Q. What else, if anything, did you do to these besides tanning them?

A. Shaved them and softened them with fat liquor and water.

Q. Did you manufacture the fat liquor applied to these; and, if so, how?

A. For 100 dozen with oil, soap, sal-soda, water, the same as stated by me on Saturday.

Q. State how and with what you treated the other 200 dozen of this lot you treated for Judson.

A. With fat liquor that I had from the mill, and put in water with it.

Q. State particularly how you prepared this fat liquor and how you treated these 200 dozen skins.

A. I put in cold water into a tub, add warm water to it, put the fat liquor in. I did not do all at once. After that I put the skins in; after they are soaked sufficient taken them out, putting them on the floor, after they are drained out, taken and put them in the drum, run them, hung them out; when they was dry taken them in, treated them in the same way as I stated before; then I hung them out, dried them, taken them in, had them staked.

Q. State within what time you treated these 200 dozen.

A. In 1869 to 1870, through the season.

Q. To what time in 1870 did you do the last?

A. Somewhere about in July; I would not be certain within a few weeks, when they all went home.

Q. What effect, if any, did the fat-liquor treatment have upon these?

A. It made them soft, pliable, and removed the squeak.

Q. State, if you remember, whether or not you treated more than one lot of bark-tanned sheep or lamb skins with fat liquor for any
253 of the persons for whom you treated such skins with fat liquor, as stated by you, prior to 1869; and if you so treated more than one lot for any of such persons, state for which one, and the number of lots you treated for each, and the time when.

A. I don't know rightly how to answer that question. I treated some for Daniel B. Judson, but how many I don't know, can't tell, and different other ones besides. That is all.

Q. State, if you are able, whether or not you treated more than one lot of bark-tanned sheep or lamb skins with fat liquor, as stated by you, before the year 1869, for Jonathan Ricketts, the Messrs. Heacocks, Edward W. Dunson, or any other person or persons, and, if so, for whom and at what time.

(Objected to by plaintiff's counsel.)

A. The first I treated was for Jonathan Rickets, somewhere in the neighborhood of 23 or 24 years ago. Then I done the first. I kept on with them at different times till I finished up all he had. Afterwards I went to Gloversville to live. I done some for Mr. Churchill and brother. That was from 20 to 21 years ago. Amounts to 5 or 6 dozen I done for him the first. Mr. David Spaulding, I done some for him, about 9 or 10 dozen; Edward Dunson, 10 dozen for him; Mr. Samuel Gilchrist, Mr. Heacocks, of Kingsboro; Daniel B. Judson, Kingsboro; Chapman & Warren, of Amsterdam; 15 dozen Chapman & Logan, of Amsterdam; Nickerson, Gloversville. That is about all I can remember of now.

Q. State, if you are able, whether or not you treated more than one lot of these skins, as stated by you, for Samuel Gilchrist; and, if so, how many, and when; and if you treated more than one lot for any of the other persons you mentioned, for whom and when.

A. I treated several lots for Samuel Gilchrist about 18 years ago. When one lot was brought the other was taken away. The same with Mr. Churchill. Mr. Churchill's was done about 20 years ago. Mr. David Spaulding, I done several lots for him. Edward Dunson, I done 3 or 4 lots for him; how many at different times I can't say. When they bring them, if I had any, they would take them away with them.

Q. Did N. C. Russell, the plaintiff, at any time apply to you to treat any bark-tanned sheep or lamb skins for him; and, if so, when, where, and what was said by him and you with reference to treating such skins?

A. About 8 or 9 years ago Mr. Russell came to me at my shop in North Elm street. He asked me whether I could do some bark-tans for him. I told him I were busy; I could not do them. I told him he could do them as well as me. He said he did not know how. I told him to get some fat liquor and put them into it, hang them out and dry them down.

He asked me whether I would color them for him. I told him
254 I would. In the course of a few days he brought them to me and I colored them, or had them colored at least in my shop, and then he come and got them and paid for them.

Q. How many were there of these?

A. From a dozen to a dozen and a half.

Q. Did you examine these skins when he brought them to you to be colored?

A. I felt of them.

Q. State whether or not they had been treated with anything to render them soft when brought to you to be colored.

A. They had.

Q. Do you know with what?

A. I do not.

Q. State the condition of these skins when brought to you to be colored.

A. They were staked out and dry.

Q. How as to their being soft or otherwise?

A. They was soft.

Q. State whether or not your son Samuel Dodge, jr., and Wm. H. Monroe treated bark-tanned sheep and lamb skins and prepared them for mittens and gloves, and, if so, state when and where.

A. They done it in my shop in Main street, somewhere in the neighborhood of eleven or twelve years ago; I cannot tell for certain.

Q. For how long a time did they do this business?

A. About one year.

Q. Did you see them treat bark-tanned sheep and lamb skins; and, if so, how and with what?

A. I see them a treating of 'em. I don't know what they used, for I had never taken interest in it.

Q. Who, if any person, beside the plaintiff, have you told how to treat bark-tanned sheep and lamb skins with fat liquor, and, if any, who and when?

(Objected to by plaintiff's counsel.)

A. I told Mr. Chapman. I believe it is James. One is James, the other is Thomas. He come to my shop after bark-tans. I told him the freight and expense come to more than it would for doing the skins, and I told him how to do it. I don't mind any one else the present time. That was somewhere about 15 years ago.

(Plaintiff's counsel now moves that the whole and each part of the last answer of witness be stricken out as incompetent, immaterial, and improper.)

Q. Who were the principal manufacturers of gloves and mittens at Gloversville from the time you commenced business there to the time of the commencement of the war in 1861?

(Objected to by plaintiff's counsel.)

A. Allen Churchill & Brother, David Spaulding, Alanson B. Judson, Samuel Gilchrist, Norman Belding, Melancthon Belding, Darius Mills & Brother, Dunson, Sprague & Brown, John McNab, Isaac V. Place, U.

Morris Place, W. C. Allen, Zina Case, Uriel Case, Rufus Washburn, Edward Leonard. There might be a few more there, but I don't remember just now.

255 Q. Will you produce a sheep-skin in the bark-tanned state, to be used in evidence as an exhibit on the trial and argument of this case?

A. I will. Here it is, marked "Defendants' Exhibit, No. one, J. W., examiner."

Q. Has this skin, marked "Defendants' Exhibit, No. one," been shaved?

A. No, sir.

Q. Has it been treated with fat liquor or anything else for the purpose of rendering it soft and pliable and removing the squeak from it?

A. No, sir.

Q. Will you produce a lamb-skin in the bark-tanned state to be used in evidence as an exhibit on the trial and argument of this case?

A. Yes. Here it is. (The witness produced the skin, which is marked "Defendants' Exhibit, No. two, J. W., examiner.")

Q. Has this skin, which is marked "Defendants' Exhibit, No. two," been shaved?

A. It has.

Q. Has it been treated with anything to soften it or to remove the squeak?

A. It has not.

Q. Will you produce a sheep-skin received by you in the bark-tanned state, and which you have since treated for the purpose of rendering it soft and pliable and removing the squeak from it, to be used in evidence on the trial and argument of this case?

A. I will. This is it. (Witness produced the skin, which is marked "Defendants' Exhibit, No. 3, J. W., examiner.")

Q. Has this skin, marked "Defendants' Exhibit, No. 3," been shaved, or is it a full-substance skin?

A. It never was shaved, and is a full-substance skin.

Q. Did you take this skin in the bark-tanned state, and treat it for the purpose of making it soft and pliable and removing the squeak? and, if so, state particularly with what and how you treated it.

A. I did, with fat liquor and cold water. I put fat liquor in cold water, put the skin in, pounded them up, hung 'em out to dry; brought 'em in and treated them in the same way; hanged 'em out, dried 'em, took him in and staked him.

Q. Had the fat liquor used by you been heated or warmed, or was it used in the cold state?

A. Was used in the cold state, as I had it from the mill. It never had been heated or warmed, as I know.

Q. Explain what you mean by the phrase "pounded them up."

A. Pounded them in the tub with a pounder.

Q. Was anything else but cold fat liquor and cold water used in the treatment of this skin?

No, sir.

Q. Will you produce a lamb-skin, to be used in evidence as an exhibit on the trial and argument of this case, received by you in the bark-tanned state and treated by you for the pupose of rendering it soft and pliable and removing the squeak from it?

A. Here it is. (Witness produced the skin, which is marked "Defendants' Exhibit No. four.")

Q. Has this skin been shaved?

A. Yes, sir; it has.

Q. State with what, and how you treated this skin.

A. With cold fat liquor and cold water, put into a tub, pound
256 it, took it out, hanged it out; when it was dry, taken it in, treated it in the same way, hanged it out, taken it in and staked it.

Q. Will you state to what extent or how much you pounded it?

A. Till it was saturated through.

Q. Was anything else used in the treatment of this skin but cold fat liquor and cold water?

A. No, sir.

Q. Will you produce a sheep-skin, to be used in evidence as an exhibit on the trial and argument of this case, received by you in the bark-tanned state and treated by you for the purpose of rendering it soft and pliable and removing the squeak from it?

A. Here it is. (Witness produced the skin, marked "Defendants' Exhibit No. five.")

Q. State whether or not this skin has been shaved.

A. No, sir.

Q. With what and how did you treat this skin?

A. With warm water and cold fat liquor, put the liquor in the tub, put the skin in, pound it, took it out, hanged it on the line; when dry, taken it in, and then treated it the same way, hanged it out; when dry, taken it and staked it.

Q. State how you prepared this liquor and how warm you made it.

A. Took two bowls of lukewarm water and one bowl of cold fat liquor and put them together, was about blood-heat. These bowls would hold about two quarts as near as I can guess at.

Q. Will you produce a bark-tanned lamb-skin, to be used in evidence as an exhibit on the trial and argument of this case, received by you in the bark-tanned state and treated by you for the purpose of rendering it soft and pliable and removing the squeak from it?

A. Yes, sir. Here it is. (Witness produced the skin, marked "Defendants' Exhibit No. six.")

Q. State with what and in what manner you treated this skin, and whether this skin has been shaved.

A. The skin has been shaved. I took two bowls of warm water and a bowl of fat liquor, put it into a tub, put the skin in, pounded it, took it out, hanged it out; when dry, brought it in, and treated it the same way, hanged it up; when dry, taken it in and staked it.

Q. Had the fat liquor used by you been heated?

A. No more than the water made it.

Q. How warm did the warm water make it?

A. About blood-heat.

Q. Where did you obtain the fat liquor used in the treatment of these several exhibits?

A. At Lewis P. Johnson's skin-mill, at Gloversville.

Q. When did you treat these several exhibits as stated by you?

A. Two weeks ago, at my shop in Gloversville.

Q. Did any one assist you in the treatment of these exhibits, or was any one present when you treated them?

A. No one assisted me, but Edward Austly was present when I treated them, and saw me treat them. I treated them all the same day. They did not get dry so as to finish them the same day.

257 Q. Did you use anything whatever in the treatment of any of these exhibits except fat liquor and water?

A. Yes, sir.

Q. How did the leather made from the bark-tanned sheep and lamb

skins treated by you with fat liquor alone or with fat-liquor and water, many years ago, for Jonathan Ricketts and the other persons mentioned by you in your evidence, compare with the several exhibits treated by you and produced on this trial to-day as to softness, pliability, and suitableness for gloves and mittens?

A. They are just as soft and pliable as those are where we had the quality, and when we did not have the quality they were not so soft, and was suitable for mittens and gloves.

Q. How did the bark-tanned sheep and lamb skins treated by you with fat liquor alone or with fat liquor and water, since the year 1858, as stated by you in your evidence, compare, as to softness and pliability and suitableness for mittens and gloves, with the exhibits treated by you and produced here to-day?

A. They were soft, pliable, fit for mittens and gloves; the same as those I exhibited here to-day, according to the quality of the skins.

Q. What quality of skins are those several exhibits?

A. Exhibit No. 5—we don't get all live skins in a bale; are a good many dead skins in it. Exhibit No. 5 is a live skin, and is a number one skin. Exhibit No. 6 is a number one skin. Exhibit No. 4 is a number one skin. Exhibit No. 3 is a number one skin. Exhibit No. 1 is a number one skin. Exhibit No. 2 I would not call a number one skin, but a number two skin, but it came as a number one.

Q. Is the fat liquor produced at the skin-mills of uniform strength or quality? And if it differs, state how, and what causes the difference.

A. No, sir; some run on a great deal more water than others will. Fat liquor from sheep-skins is not as good as it is from deer-skins.

Q. Did you ever treat a bark-tanned sheep or lamb skins with fat liquor when heated to or near the boiling-point?

A. No, sir; except the one I took as an exhibit on the trial at Utica.

Q. What effect was produced to that skin by the application of fat liquor when so heated?

A. It burned it, scalded it—that one.

Q. What would be the effect of applying fat liquor heated to or near the boiling-point to bark-tanned sheep or lamb skins?

A. When it is nearly at boiling-point it would scald them, but if you let it stand to get cold, or cold enough to use, then you have to skim the oil off of it, and it impoverishes the fat liquor; but if we would use it, it would cause the skins motley. The oil that is on the fat
258 liquor would strike into the skin and cause the skins spotted, if used without skimming.

Q. State whether or not bark-tanned sheep or lamb skins, when subjected to fat liquor when heated to or near the boiling-point, would be of any use or value.

A. It would not.

Q. State, if you are able, the difference, if any, between the effect produced by the application of fat liquor to bark-tanned sheep or lamb skins in a cold state and in a warm state.

A. There is no difference, except on doing the work faster with warm liquor than you can with cold. Warm liquor will strike quicker or faster into the skin than what cold will.

Q. What is the expense of treating bark-tanned sheep and lamb skins with fat liquor to render them soft and pliable and remove the squeak from them, and render them suitable for mittens and gloves, as you have stated in your evidence?

(Objected to by plaintiff's counsel.)

A. One dollar a dozen for lamb-skins and one dollar and fifty cents per dozen for sheep-skins.

After reading over the foregoing testimony of the last witness, he desires to make the following correction: That he treated the twenty-five dozen skins for Daniel B. Judson nearly four years ago, instead of between "four and five years," as stated by him; and, also, that the witness, Frederick S. Green, left the employ of defendants nearly two years ago, instead of about one year, as heretofore stated by him.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. Were you sworn and examined as a witness for defendants on the trial in an action by this plaintiff against Isaac V. Place and John W. Place, tried at Albany, before Judge Woodruff, in October, 1870, for an infringement of the patent in question?

A. I was.

Q. Were you also sworn and examined as a witness for defendant in an action by this plaintiff against Albert Klein for an infringement of this patent, tried at Utica, before Judge Hall, in March, 1871?

A. I was.

Q. Have you since seen or heard read your evidence in either of those cases?

A. I have not.

Q. Have you talked with anybody or has anybody talked with you in regard to your evidence in either of those cases; and, if so, with whom and when?

A. Not as I remember.

Q. Did you, in your evidence on those trials, undertake to give your knowledge of and experience in the use of fat liquor and the treatment of bark-tanned sheep and lamb skins to prepare them for mittens and gloves?

A. I did.

Q. Did you, on the trial at Utica, testify that you had resided at Gloversville twenty-three years?

A. I don't remember as I said that.

259 Q. Can you swear that you did not say it?

A. No, sir.

Q. On the trial at Utica, in speaking of the use of fat liquor by you, did you state in substance, when speaking generally of your use of it, that you had sometimes used it warm and sometimes cold?

A. Yes, sir.

Q. Did you also state, in substance, that you used it warm in the winter-time and cold in the summer, and that whether you used it warm or cold depended upon the season and your convenience?

A. Yes, sir.

Q. Did you on that trial say anything about a different mode of preparing fat liquor, when it was to be applied to different kinds of skins or different qualities of the same kind?

A. Yes, sir.

Q. What did you say on that trial in that regard?

(Objected to by plaintiff's counsel.)

A. That I used oil and eggs. I believe I said I used some stuff I did not choose to tell. I think that was the words.

Q. Did you on that trial say anything in regard to the class, kind, or quality of the skin to which you applied the oil, eggs, and this secret process or ingredient, or did you speak generally of having sometimes

used fat liquor, sometimes these other ingredients, without discriminating the occasion of such use?

A. Yes.

Q. What kind, class, or quality of skin did you there specify as that to which you applied the oil, eggs, or this secret process or ingredient?

A. The hardest and the thickest skins.

Q. Do you mean to swear positively that on the trial at Utica you did not state generally in substance, when giving your experience in the treatment of bark-tanned sheep and lamb skins, that you had sometimes used fat liquor, oil, and eggs and your secret process, without specifying or discriminating the class, kind, quality, of skin to which you applied these several materials?

A. No, sir.

Q. On the trial at Utica, did you speak of having used fat liquor on oil tanned or dressed skins?

A. I did.

Q. Did you then mention any difference in the preparation of the liquor or material for its application to that kind of skins than when it was to be applied to bark-tanned skins?

A. I don't remember.

Q. Did you not then speak generally of the preparation and use by you of fat liquor on that kind of skins and on bark-tanned skins, without mentioning any difference in the preparation or ingredients, whether it was to be applied to the one or the other kind?

A. I don't remember.

Q. In your experience in the use of fat liquor for application to oil-dressed skins, did you prepare it in any different manner than when you prepared it for bark-tanned skins?

A. Sometimes I did, and sometimes I didn't.

Q. How did you prepare it when you did, and how when you didn't?

260 A. On oil-dressed I used my fat liquor as I get it in the mill. On bark-tans, I weaken it down with water in some 'casions; some 'casions again I use oil and eggs and fat liquor and ammonia.

Q. Is that the only difference you can state in the preparation of the liquor for the two kinds of skins?

A. The one is applied warm and the other cold.

Q. Can you state any other difference in its application to the two kinds of skins?

A. One is scoured after treatment, and the other ain't.

Q. My question was, and what I desire to know is, whether you can state any other difference in the preparation of the liquor, or its application to the different kinds of skins—that is, bark-tanned or oil-tanned—than you have already stated?

A. Not as I know of, not more than I have stated.

Q. To which of these two kinds, bark-tanned or oil-dressed, did you apply the liquor warm and to which cold?

A. To the bark-tanned I applied it warm and to the oil-dressed cold.

Q. Do you mean to be understood as testifying that you always applied the fat liquor warm to the bark-tanned skins?

A. No; I sometimes apply it cold to them, but that is the general use, to apply it warm to bark-tans.

Q. Do you now mean to be understood as testifying that in your use of fat liquor in its application to bark-tanned skins, prior to 1869, you generally applied it warm, and that its application cold was an exception?

A. I always applied it warm, except sometimes in the summer season.

Q. I repeat, and desire a direct answer. Do you now mean to swear that your general use of fat liquor prior to 1869 was when it was in a warm state, and that your use of it cold was only occasional and exceptional?

A. Yes, sir.

Q. Then why did you testify at Utica (as you have now on your cross-examination admitted) that you sometimes used it warm and sometimes cold, according to the season, and as suited your convenience?

A. That is the same as I answered the last question, sometimes warm and sometimes cold, but generally warm.

Q. Is it true or not, that in your use of fat liquor prior to 1869, in its application to bark-tanned skins, you used it warm or cold, according to the season, and as suited your convenience?

A. It is.

Q. Did you state in substance, at Utica, that it made just as good leather to apply it cold as warm?

A. Yes.

Q. In your use of fat liquor on bark-tanned skins, in the year 1870 and 1871, was there any change from your former use of it in respect to its application of it, warm or cold?

A. No, sir.

Q. In your testimony on the trial at Utica, in speaking of your use of fat liquor on bark-tanned skins in 1870 and 1871, did you say that you generally used it cold?

A. I don't remember as I did.

261 Q. Will you swear that you did not so testify on that trial?

A. No, sir.

Q. On the trial at Utica, in speaking of your experience in the use of fat liquor, in its application to oil-dressed skins which had been scoured too clean, did you state in substance that you had used other ingredients with the fat liquor?

A. I don't remember.

Q. Did you there state, in substance, that you had added to the fat liquor soap and sal soda in preparing it for application to skins which had been scoured too clean?

A. I might; I don't remember.

Q. Had you prior to 1869, in the treatment of bark-tanned skins with fat liquor, mixed with the fat liquor any other ingredient?

A. I had.

Q. Had you sometimes mixed eggs with the fat liquor?

A. Yes.

Q. Had you sometimes mixed sal soda and soap, one or both, with the fat liquor?

A. Yes.

Witness further said "when I used oil," which part of witnesses answer counsel for defendants insisted to be *sr*eived, but objected to by plaintiff's counsel as not re*pc*onsive to his question.

Q. Do you understand I am now inquiring of your use of fat liquor on bark-tanned skins?

A. No, I didn't at the time.

Q. In your use of fat liquor on bark-tanned skins prior to 1869, did you ever mix with it any other ingredients?

A. I have.

Q. What? Name all the ingredients you ever mixed with fat liquor in its application to bark-tanned skins.

A. Soap, sal roda, oil, eggs, carbonate of ammonia.

Q. Did you not state, in substance, on your direct examination in this case, that in your use of fat liquor, in its application to bark-tanned skins, you never mixed any other ingredients with the fat liquor?

A. Not to the skins; that I sworn to all the way long.

Q. Did you not swear, in substance, on your direct examination in this case, that in your application of fat liquor to bark-tanned skins generally, and without confining it to the particular lots mentioned by you in your evidence, you had not mixed any other ingredients with the fat liquor?

A. I swore that I did not use anything else but fat liquor and water.

Q. On the trial at Utica, in speaking generally of your treatment of bark-tanned skins, did you not say, in substance, that you had sometimes used fat liquor alone, sometimes mixed with other ingredients, sometimes used eggs and oil, sometimes your secret process, without undertaking to specify on which lot or lots you applied the fat liquor alone, and on which you mixed with it the other ingredients?

A. I did, to the best of my knowledge.

Q. On the trial at Utica, were you asked particularly to name the persons for whom you had dressed bark-tanned skins with fat liquor?

A. I believe I was.

Q. And did you there undertake to name such persons?

262 A. I believe I did.

Q. Did you name David Spaulding on that occasion?

A. I don't remember whether I did or not.

Q. Did you name the Heacocks?

A. That I don't remember.

Q. Did you name either Chapman & Warren, Chapman & Logan, or Mr. Dunson?

A. I can't say.

Q. State as nearly as you can the time you commenced work for Jonathan Ricketts.

A. In the year 1835 or 1836; I think now it may be in 1845 or 1846. It is 25 or 26 years ago.

Q. Is that as near as you can fix the time?

A. Yes.

Q. How long did you work for him?

A. Five years.

Q. Did you testify on the trial at Utica, in substance, that you commenced work for Jonathan Ricketts about 23 years ago that month?

A. I might, but I don't remember.

Q. Were the bark-tanned skins you have spoken of as treated with fat liquor for Jonathan Ricketts one lot or different lots?

A. Different lots, for I had them at different times.

Q. How many different lots or times?

A. That I can't answer; couldn't state.

Q. State as well as you are able.

A. Sometimes I get ten dozen, sometimes more, at a time.

Q. State the number of lots or times in all during the five years you worked for Jonathan Ricketts, as nearly as you are able.

A. It might be 20 or 25 lots; I couldn't state.

Q. Do you think there were as many as 20 or 25 lots in all?

A. I should think there was.

Q. Were these confined to one or more years, or does it cover the entire five years?

A. It covers about two years, I should say.

Q. Which two of the five years?

A. The last two.

Q. Do you mean to be understood that you treated no bark-tanned skins for him during the first three of the five years?

A. I can't say; I believe I did some in the third year, but would not swear to it positively.

Q. Then you mean, do you, that these 20 or 25 lots covered the last two years, and possibly a part of the third?

A. Probably it might be; I keep no account.

Q. How near the time of your leaving Mr. Ricketts was the last lot treated?

A. I can't say.

Q. Can you tell in what year the larger portion of the 20 or 25 lots was treated?

A. I think the most of them were treated after I had been there two years.

Q. Can you tell now whether the larger portion was treated in the 3d, 4th, or 5th year?

A. The third year, I think it was.

Q. A few minutes since, you were not quite certain that any were treated the 3d year; what new light, if any, have you on that point now?

A. Well, I took into consideration the time they was done.

Q. Is your recollection on that point any clearer now then it was a few minutes ago?

A. I think it is.

Q. Then will you have the kindness to state what time in the third year you commenced on the 20 or 25 lots, and how many of them

263 you did the third year.

A. I commenced them in the winter season. I might have done a hundred to 150 dozen that winter season in different lots.

Q. What month in the third year did you commence?

A. I can't tell.

Q. What month in the third year did you close?

A. That I can't answer.

Q. Can you swear you did a hundred dozen that year?

A. I think I did.

Q. Can you swear positively that you did?

A. I cannot.

Q. Whatever the number may have been, were they all in one or in different lots; and if so, in how many?

A. I had them in different lots, but how many lots I don't know.

Q. How many dozen can you swear to in the fourth year of the five?

A. I couldn't swear how many I did do the fourth year.

Q. Whatever the number may have been, if any, were they all in one or in different lots; and if so, how many?

A. They were bought in two lots, but I got them in smaller lots; but can't tell in how many different lots I got them.

Q. How many dozens can you swear to having done the fifth year?

A. They might have been 50 dozen on 'em.

Q. State how many.

A. I can't do it.

Q. In speaking on this subject on the trial at Utica, did you say in

substance that you worked on bark-tanned skins occasionally during the whole time you worked for Ricketts; that you could not tell the proportion of the time that you worked at this kind of skin, but you did not think it was one-eighth of the time?

A. I might; I don't remember.

Q. On that trial, in speaking generally, the treatment of all these bark-tanned skins you did for Ricketts, did you say in substance that you used other processes and ingredients than fat liquor?

A. On some of them.

Q. Did you then state on what kind or classes of these skins of Ricketts' you used other ingredients and processes than fat liquor?

A. I believe I did.

Q. Will you swear you did?

A. No; I couldn't.

Q. Did you not there testify in substance that in the treatment of these skins for Ricketts you sometimes used fat liquor mixed with other ingredients?

A. I did.

Q. Did you there specify any particular class or quality of those skins to which you applied the fat liquor mixed with other ingredients?

A. I believe I did.

Q. Will you swear you did?

A. No; I would not swear to it that I said so.

Q. You understand me now, do you not, to refer to your testimony in regard to the bark-tanned skins which you claimed to have treated for Jonathan Ricketts?

A. Yes.

Q. Did you there testify in substance that in the treatment of some of these skins that you mixed with the fat liquor some process or ingredient of your own, the nature and character of which you declined to disclose?

A. I did.

264 Q. Did you then specify any particular kind or quality of these skins to which you applied the fat liquor mixed with your secret?

A. I don't believe I did; but don't remember if I did or not.

Q. Did you there testify in substance that in the treatment of these bark-tanned skins for Ricketts you sometimes used your secret in connection with eggs?

A. I believe I did.

Q. And did you there specify any particular class or quality of skins you treated with your process and eggs?

A. I might; but I don't remember.

Q. Did you there state in substance that in the treatment of these skins you sometimes used your secret with eggs and sometimes with eggs and fat liquor?

A. I believe I did.

Q. Did you there specify any particular kind or class of skins to which you applied your secret with the eggs, and to which you applied it with the fat liquor and eggs?

A. I don't remember.

Q. Did you there in substance testify that in the treatment of these skins you sometimes used your secret and sometimes didn't; that you could not tell or give any idea how often?

A. I think I did.

Q. In your testimony there, in speaking generally of these bark-tanned sheep and lamb skins for Ricketts, did you testify in substance that you

sometimes dipped the skins in the liquor and that you sometimes brushed it on?

A. I don't remember if I said so at Utica.

Q. Will you swear you did not so say?

A. No, sir; I wouldn't.

Q. Did you there testify in substance, in speaking of the treatment of these skins for Ricketts, that you sometimes used the fat liquor cold and sometimes you warmed it, and that you could not give the jury any idea of what proportion of the time you used it cold or what proportion you used it warm?

A. I believe I did.

Q. Is that true in point of fact?

It is true if I told them so.

Q. Is the egg process of treating bark-tanned sheep and lamb skins more expensive than the fat-liquor process?

Q. Not now it ain't.

Q. Was it so at the time you testified on that trial at Utica?

A. A little more; not much.

Q. Did you there testify in substance that it was considerably more expensive?

A. I might, but don't remember.

Q. If you did so testify there, was it true or otherwise?

A. 'Twas true.

Q. Was the egg process more or less expensive at the time you worked for Jonathan Ricketts than the fat-liquor treatment?

A. The egg process was dearer then.

Q. Have you used the egg process within the last three years?

A. I have.

Q. Have you used it on bark-tanned sheep or lamb skins within that time?

A. I have.

Q. Had you at the time of the trial at Utica used it within the then past two or three years?

A. No, sir.

Q. Were you using it in the treatment of bark-tanned sheep and
265 lamb skins at the time of that trial?

A. I believe I was near about that time.

Q. Did you not state, in substance, on that trial, that you did not then use the egg process?

A. I don't remember.

Q. Will you swear you did not?

A. No, sir; I wouldn't.

Q. Were you asked on that trial, in substance, why you did not use it, and did you, in reply to that question, say "because it is a little more expensive," or that in substance?

A. I might have said so, but I don't remember.

Q. Will you swear you did not so state?

A. No, sir; I will not.

Q. Is it true, or otherwise, that for two or three years prior to the trial at Utica, in your treatment of bark-tanned sheep and lamb skins, you had discontinued the egg process?

A. No, sir.

Q. Then why did you testify at Utica that you did not use it, and that the reason was because it was a little more expensive?

A. I must have been mistaken there at Utica if I testified that.

Q. Is that mixture compounded by you, as testified to by you on your

direct examination, which you call "fat liquor," composed of oil, soap, sal soda, and ammonia dissolved in water, more or less expensive than the fat liquor which you get from the mills?

A. Take out the ammonia; I can't make fat liquor with ammonia in it.

Q. Take out the ammonia, and then state whether such mixture is more or less expensive than the fat liquor you get from the mill.

A. Yes; it costs a little more.

Q. Do you mean now to state that on all the bark-tanned skins you treated for Ricketts you used fat liquor without other ingredients?

A. No, sir.

Q. Can you now state on what proportion you used fat liquor and what proportion fat liquor with other ingredients?

A. I should guess that I done three-fourths with fat liquor alone. I should judge so as near as I can guess, I don't recollect now; it is a long time ago.

Q. I did not ask you to guess, but to state, if you know the proportion; but if you don't, then say so.

A. That is as near as I can come at it. I can't come any farther.

Q. Did you do all that you treated with fat liquor alone along in lots consecutively, or did you alternate with the treatment?

A. No, sir; I assorted my skins as I got them that I wanted to treat with fat liquor; I done so, and the hard I added my other ingredients with it.

Q. Then you mean to be understood, do you, that you would treat a lot with fat liquor alone, and may be the next lot with fat liquor and other ingredients?

A. Yes, sir.

Q. Now, can you state with any accuracy how many lots you treated with fat liquor alone and how many with fat liquor and other
266 ingredients in the third year of the five that you worked for Ricketts?

A. I can't.

Q. Or the fourth year?

A. I can't tell how many I done each year, there were so many skins there and I done them.

Q. Or the fifth year?

A. I could not tell.

Q. Do you mean to be understood as testifying that every lot or quantity of bark-tanned skins that you treated for Ricketts you separated, and some treated in one way and some in another?

A. I do.

Q. How many did you have to treat in the first lot or quantity brought to you for treatment while there?

A The first lot was about 150 or 160 dozen; might be more.

Q. How many of these did you treat with fat liquor alone and how many with fat liquor and other ingredients? If you can, state without guessing, and, if not, say so.

A. Three-fourths with fat liquor, one-fourth the other, as near as I can state.

Q. How did you treat the other of this lot that were not treated with fat liquor alone?

A. I dissolved some carbonate of ammonia in warm water, put the skins into it, saturated them through, taken them out, hanged them out, dried them, brought them in, prepared my fat liquor, soap, oil, sal soda, and after it was all dissolved together I put some eggs in it, made a liquor of it, put the liquor in the tub, put the skins in, stirred them up, then

trod them, hanged them out and dried them, brought them in, dampened and staked them; that were soft enough was finished, them that wasn't I put them back and treated them the same way I did before, then hung them out again, dried them down, staked them, and finished them.

(Adjourned over Christmas.)

Q. Of the skins treated with fat liquor for Ricketts, as you stated, was the larger proportion split or unsplit?

A. Split.

Q. Does that apply to the heavy as well as to the light skins?

A. Yes.

Q. Were the unsplit ones shaved or unshaved before the application of fat liquor to them?

A. Unshaved.

Q. Were they shaved after the application of fat liquor?

A. They were.

Q. Is the shaving of them included in the term "finishing of them," as you have used the term in your evidence?

A. It is.

Q. What proportion of those you treated for Ricketts were unsplit?

A. I could not tell exactly; might be a hundred or a hundred and fifty dozen on them.

Q. Did you testify, in substance, on this point, at Utica, most of them were unsplit?

A. I don't remember as I did.

Q. Can you now state positively that there were a hundred dozen unsplit?

A. I could not.

Q. Can you swear positively that there were as many as any particular number which you can mention that were unsplit?

A. I am willing to swear there were as many as 70 or 80 dozen, and there might be as many as a hundred and twenty-five or fifty
267 dozen, and I believe there was, too.

Q. Of these treated for Ricketts, which were dipped in the fat liquor, if any, how long was the skin left in the liquor?

A. Till they was saturated through. I cannot give the time; sometimes it would take me as long again for them as others.

Q. State as nearly as you can remember the longest and the shortest time it took you.

A. From fifteen minutes to a half hour.

Q. And did you tread them during this time as you have described on your direct examination?

A. I did.

Q. Did you tread those to which you applied the fat liquor with the sponge or brush?

A. I did not.

Q. Did you tread those to which the liquor was applied warm?

A. Some I did and some I didn't.

Q. Did you tread those to which the liquor was applied in a cold state?

A. Some I did.

Q. What proportion of those dipped in fat liquor did you subject the second time to the same process as stated by you on your direct examination?

A. The whole of them.

Q. Then the first process of running them through the fat liquor and

treating them as you have described did not, in your judgment, make them sufficiently soft and pliable, and so remove the squeak as to render them suitable for mittens and gloves?

A. Not for me it didn't.

Q. How long a time did it occupy from the time you took the skins in hand for treatment before they were completed and ready to be cut into mittens and gloves?

A. That depends on the weather. It might take one week and might take two.

Q. How long did it take in fair weather?

A. Seven or eight days.

Q. In the treatment of those for Ricketts, in which you used other ingredients with the fat liquor, how long a time did it occupy in fair weather to fit the skins for mittens and gloves?

A. Some of them would not take me over a week and some would take me a month.

Q. If I understood you correctly on your direct examination, you selected the lightest and thinnest skins for treatment with fat liquor alone?

A. With fat liquor and water.

Q. Was the ammonia, egg, and oil process more or less expensive than the fat liquor process?

A. A little more expensive.

Q. Are you able to state of your own knowledge that any of the skins for Ricketts, spoken of by you, when made into gloves were sold as Indian-tanned leather or gloves?

A. Not of my knowledge.

Q. On the trial at Utica, in speaking of the extent of your business, did you say in substance that you had for some time past employed 25 or 30 hands, and that it sometimes ran down to twenty?

A. I believe I did.

Q. On the trial at Utica, on being asked in substance to mention the next job or lot of bark tanned sheep or lamb skins after those
268 which you did for Ricketts, did you mention a lot for Churchill?

A. I guess I did.

Q. Did you say in substance that this lot probably consisted of over a thousand skins?

A. I guess I did.

Q. In speaking of your mode of treating this lot of skins, did you there testify in substance that you used the fat liquor sometimes warm and sometimes cold, and that you could not state how much of the time you used it warm and how much cold?

A. I believe I did.

Q. And did you also testify at Utica in substance that in the treatment of this lot of skins you sometimes used your secret process in connection with the fat liquor?

A. I don't remember; I might.

Q. And when asked in substance to state the next lot or instance in which you applied fat liquor to bark-tanned sheep or lamb skins after this lot for Churchill, did you testify in substance, in reply, that you could not tell; that you kept on working at it, more or less, all the time; that the next you remembered was for Gilchrist; that you worked right along, sometimes at Churchill's, sometimes at Gilchrist's, and sometimes at Judson's; that the work was mixed up; probably one day you would work at one man's work and another day another, and that this continued on so for two or three years, more or less?

A. I don't remember as it was.

Q. Do you mean to be understood as swearing that you did not so testify at Utica?

A. I do not.

Q. Did you further testify that you applied what you had said about Churchill's to the others just named?

A. I believe I did.

Q. On the trial at Utica, after speaking of treating bark-tanned sheep and lamb skins for Churchill, Gilchrist, and Judson in the manner to which your attention has just been called, did you say in substance that you stopped using fat liquor for three, four, or five years, and the next lot you did was for Nickerson, in the neighborhood of twelve years ago?

A. I don't remember; I believe it was.

Q. Did you then say in substance that in this lot of Nickerson's there were about 25 or 30 dozen?

A. I don't remember.

Q. After speaking of this lot of Nickerson's did you say in substance that you did not do any more for some length of time again; that you could not tell when; that you were not able to give anywhere near the time when you resumed again on such skins?

A. I remember something of that; I do not remember exactly, but in substance I think I did.

Q. When asked to state the first lot you did after Nickerson's, did you reply, "I can't tell you," then add in substance that you had done some for Judson since, but what time you could not tell?

A. I believe I did.

Q. And did you also say that "it might have been two or three
269 years or more after doing Nickerson's before doing Judson's, but that you could not tell anything about it?"

A. I don't remember.

Q. Can you say that you did not so testify?

A. No, sir.

Q. At any of the times when you did skins for Daniel B. Judson, prior to 1869, of which you have spoken, was there any person in business with him?

A. I don't know.

Q. Did you treat any bark-tanned sheep or lamb skins with fat liquor in the year 1869?

A. I believe I did.

Q. About how many? State the number as nearly as you are able.

A. I treated twenty-five dozen.

Q. Who for, and what part of the year?

A. Daniel B. Judson, in the spring of the year.

Q. Did you state on the trial at Utica that you did not treat any in that way in 1869?

A. I don't remember.

Q. When speaking on the trial at Utica of doing the skins for Churchill and of doing them for Henry and Allen Churchill, on your direct examination in this case do you refer to the same jobs?

A. I do.

Q. Were these skins done for Churchills sheep or lamb skins or both?

A. Sheep-skins.

Q. Were those you spoke of on your direct examination as those done for David Spaulding sheep or lamb skins or both?

A. They were most all sheep-skins, were some lamb-skins among them.

Q. In what year did you treat these?

A. About twenty years ago.
Q. State the year if you are able; if not, say so.
A. In 1852.
Q. What month?
A. I can't tell you.
Q. Did you run this lot through the fat liquor once or twice?
A. Twice.
Q. How long did you keep them in the liquor each time?
A. I don't know; I didn't keep them any time.
Q. State the time as nearly as you are able.
A. From 30 minutes to three-quarters of an hour, till they were saturated through.
Q. Did you tread them all the time while they were in the fat liquor?
A. No, sir.
Q. Did you tread them any portion of the time they were in the fat liquor, and if so, what portion?
A. I did, about half the time.
Q. Those you have spoken of treated for Churchills, did you dip or apply with the brush?
A. Applied it with the brush.
Q. Did you subject them more than once to the fat liquor?
A. Some of them I did, and some of them I didn't.
Q. What portion of them did you subject to fat liquor the second time? State as nearly as you are able.
A. Nearly one fourth on 'em.
Q. In what year did you do those for the Churchills?
A. In 1852 and 1853.
Q. Did you dip or brush those you mentioned as having done for Dunson?
A. I dipped them.
Q. Once or twice?
A. Twice.
Q. How long each time did you subject them to fat liquor?
A. I could not tell you.
Q. Tell as nearly as you can.
A. The first time it takes about half an hour, as near as I can
270 guess at it. The second time about three-quarters.
Q. Were these sheep or lamb skins?
A. I should call 'em lamb-skins.
Q. In what year did you treat these?
A. In 1855 or 1856, I wouldn't be certain which.
Q. Did you treat all you treated for Dunson in that year, whichever it was?
A. I did another lot for him since that.
Q. Did you do more that this one lot for Dunson you have spoken of in the year 1855 or 1856?
A. Yes; he brought two or three lots there.
Q. Which? if you know.
A. I should say two lots.
Q. In your testimony already given as to your manner of treating Dunson's skins, did you refer to both of these lots or only one?
A. I only referred to one of them.
Q. In speaking of the skins you did for Dunson, do you refer to the same you mentioned on your direct as done for Dunson, Sprague & Brown?
A. No, sir.

Q. How did you treat the second lot you did for Dunson in 1855 or 1856?
A. I used my own mixture, fat liquor with ammonia.
Q. Was this before or after you treated the other lot mentioned?
A. After.
Q. How long after, and what month of the year?
A. I couldn't tell; was not long after, but couldn't tell what month it was.
Q. How many were there of this lot?
A. About ten dozen on 'em.
Q. Were they sheep or lamb skins?
A. They were lamb-skins.
Q. Did you use any eggs on them?
A. I don't know whether I did or not.
Q. Did you do any other lots for Dunson alone, that you are now able particularly to specify?
A. I done one lot for him after he come home from the war.
Q. What year was that and what part of the year?
A. I couldn't say what year, or what part of the year.
Q. How many of this lot?
A. That I couldn't say, not exactly.
Q. State as nearly as you can.
A. Small lot, might have been five or six dozen.
Q. How did you treat these?
A. I treated them with my fat liquor, that I prepared as before stated.
Q. Were they sheep or lamb skins?
A. Were lamb-skins.
Q. Now, if you have stated all you can remember to have done for Dunson alone, mention when you did the lot referred to by you as treated for Dunson, Sprague & Brown.
A. I believe it was in 1856, as near as I can recollect.
Q. Was it the same Dunson before spoken of in your testimony?
A. Yes.
Q. How many did you do for them?
A. Somewhere near fifty dozen; can't tell to a dozen.
Q. How did you treat those?
A. Brushed the fat liquor on with the brush.
Q. Once or more?
A. Once, mostly. Them I finished.
Q. Did you subject any of them the second time to fat liquor?
A. Some of them I did.
Q. Were they sheep or lamb skins?
A. Sheep-skins, and some lambs amongst them.
Q. Were these split, or unsplit?
271 A. Split.
Q. In what year and in what part of the year did you do those for Gilchrist mentioned on your direct examination?
A. In 1852 I done the first lot, as near as I can remember.
Q. How many in this lot?
A. About 7 or 8 dozen.
Q. Is that the lot referred in your direct examination as done in a little back street right by Alans. Judson's shop in Gloversville?
A. That is the shop, but I worked for him three years.
(This answer is insisted upon by counsel for defendants, but objected to by counsel for the plaintiff as not responsive to the question.)
Q. On your direct examination, after speaking of some skins done for

Edward Dunson, you stated in substance that the next time you treated skins in that way was in the same year, and a lot of about six dozen you did for Samuel Gilchrist, which you did in a little back street right by Alanson Judson's shop in Gloversville. Now is this the same lot, just referred to on your cross-examination, when you state that the first lot you did for Gilchrist was in 1852, and that it consisted of 7 or 8 dozen?

A. I ain't sure of that.

Q. Do you know whether you specified and detailed your manner of treatment of more than one lot for Gilchrist on your direct examination?

A. I guess I did not.

Q. In what year was the lot you did specify done?

A. I think it was in 1853.

Q. What month of the year?

A. Can't tell what month.

Q. How many dozens were there in the lot?

A. About 6 or 7 dozen.

Q. Did you dip or brush them?

A. I don't know; some I dipped and some I brushed for him.

Q. Did you subject this lot more than once to fat liquor?

A. If I dipped them, I done so; if I brushed them, I'd only brush them once.

Q. Then you don't know now whether you did or did not subject this lot the second time to fat liquor?

A. I don't.

Q. Were this lot sheep or lamb skins?

A. Sheep.

Q. If you have now stated the first lot you recollect as having done for Gilchrist, will you state the second lot, if any, you now remember to have done for him?

A. The second lot was in the same year.

Q. What time in the same year?

A. In May or June.

Q. How long after the first lot?

A. About 2 or 3 weeks.

Q. How many in this lot?

A. Five or six dozen on 'em.

Q. Sheep or lamb?

A. Sheep-skins.

Q. Did you dip or brush them?

A. Dipped them.

Q. Once or twice?

A. Twice.

Q. Did you tread them also?

A. I did.

Q. Can you now specify distinctly any other lot done for Gilchrist; and, if so, when was it?

A. The same year.

Q. What time in the same year?

A. In July or August.

Q. How many in that lot?

272 A. Eight or 9 dozen.

Q. Did you dip or brush these?

A. Brushed them, and finished them.

Q. Split or unsplit, sheep or lamb?

A. Unsplit sheep-skins.

Q. Did you apply fat liquor more than once to these?
A. No.
Q. Did you treat any of the bark-tanned skins for Gilchrist by any other process than fat liquor and water; and, if so, by what?
A. I did, with my own manufactured fat liquor.
Q. Did you apply any eggs to it?
A. I did not.
Q. Any ammonia?
A. I did not.
Q. Were any of these skins you treated for Gilchrist tanned with sumac?
A. No, sir; not them I have stated, but I did some for him that were tanned with sumac.
Q. Have you now, while testifying, any means of discriminating or specifying the particular lots done by you for Gilchrist—the particular manner of doing each lot, and how each lot had been tanned—except your memory?
A. That is all.
Q. In what year did you do those mentioned in your direct examination as done for Chapman and Warren?
A. In 1857 or 1858; am not certain which.
Q. Did you dip or brush these?
A. I dipped them?
Q. Once or twice?
A. Twice.
Q. Tread them also?
A. I did.
Q. How long did you subject them to fat liquor and treat them each time?
A. From half an hour to three-quarters, as near as I can guess?
Q. Were they sheep or lamb skins?
A. There were some lambskins amongst them.
Q. Is the Chapman you mentioned on your direct examination, as connected with Warren, the same as the Chapman spoken of by you as connected with Logan?
A. No, sir.
Q. State the Christian name of each, if you know?
A. One is James and the other is Thomas, as I understand it. James was with Warren and Thomas was with Logan.
Q. When was it you did the skins mentioned as done for Logan & Chapman?
A. At the same time as those for Chapman & Warren.
Q. Were they the same kinds of skins and done in the same way?
A. They were.
Q. In barked-tanned sheep and lamb skins treated by you for Daniel B. Judson prior to 1869, did you use any other process than fat liquor and water?
. Not as I remember.
Q. Can you swear positively whether you ever did or did not?
A. No, I would not swear positive.
Q. Were those you mentioned as having treated for Daniel B. Judson, about fifteen years ago, at your shop on Main street, sheep or lamb skins?
A. They were sheep-skins.
Q. Did you subject them to the fat liquor once or twice?
A. Twice.
Q. And about how long each time?

A. From half an hour to three-quarters.

Q. Did you ever treat any for the Heacocks, spoken of by you, prior to 1869, in any other manner than by the use of fat liquor and water?

A. I did not.

Q. Can you tell what year you treated the lot referred to by
273 you for them?

A. In 1858.

Q. How many years ago was it you treated the lot spoken of on your direct examination for Mr. Nickerson?

A. About thirteen years ago.

Q. And how many dozen?

A. Ten dozen.

Q. Did you testify, in substance, at Utica that it was then twelve years ago, and that it was twenty-five dozen?

A. I might, but I don't remember.

Q. Have you now any means of telling the times, quantities, or manner of treating any of these lots of skins for any of the persons or firms named by you prior to those done for Daniel B. Judson 4 or 5 years ago, at your shop on North Elm street, except your memory?

A. That is all, sir.

Q. Prior to that time, had you done any bark-tanned sheep or lamb skins for the Churchills, or either of them, in any other manner or by any other process than by the use of fat liquor and water?

A. Sometimes I did.

Q. With what, and in what manner?

A. Eggs and oil, cut up with sal-soda and soap, that is all.

Q. When did you so treat them?

A. In the same year as I was finishing up the lot.

Q. Do you mean the same year you treated the lot with fat liquor before spoken of by you?

A. Yes, sir.

Q. Did you treat any for Spaulding by egg process, or any other than the fat liquor and water?

A. Not as I remember.

Q. Are you willing to swear positively that you did not?

A. No, sir.

Q. In what year was it that you did the 25 dozen for Daniel B. Judson at your shop in North Elm street?

A. Either 1857 or 1858.

Q. I understood you to testify in your direct examination that it was 15 dozen that you did for Daniel B. Judson at that time. Do you mean to change that?

A. I don't want to change anything.

Q. In what year was that lot done for Daniel B. Judson which you first testified was "about 4 or 5 years ago," and subsequently altered it to "four years ago?"

A. That was in 1869, as I can recollect.

Q. How long after that lot was it that you did the next lot for Daniel B. Judson spoken of by you as having tanned yourself with tan-bark?

A. The same year, about 3 or 4 months afterwards.

Q. Was the liquor with which you treated this lot prepared by yourself, as described on your direct examination, more or less expensive than the fat liquor from the mill?

A. It was a little more expensive.

Q. Were these sheep or lamb skins?

A. They was called "California sheep."

Q. Do you remember now who next you treated for after last lot spoken of?

A. No, sir.

Q. Can you specify any lot of bark-tanned sheep or lamb skins treated by you with fat liquor since that hundred dozen?

A. Yes; for George Jeffers, and Solomon Jeffers, too.

Q. Were these sheep or lamb skins?

274 A. Were some sheep, and some lamb.

Q. Were these subjected more than once to fat liquor?

A. Yes, sir.

Q. How long each time?

A. From 20 minutes to half an hour; we can do it a little quicker now than we could before.

Q. In your treatment of bark-tanned sheep and lamb skins with fat liquor since 1869, have you generally dipped or brushed them?

A. Dipped them.

Q. And about how long at a time have you subjected the skins to the fat liquor?

A. From 20 minutes to half an hour.

Q. Can you swear that you have not in any instance had them in less than 20 minutes at a time?

A. No, sir.

Q. Have you since 1869 applied the liquor warm, or in a cold state?

A. In a warm state except those few skins that are here as exhibits.

Q. Do you mean to be understood as testifying on your direct examination, that in any of the exhibits produced by you on the trial at Utica, fat liquor had been applied to the skin when at or near the boiling-point?

A. No more than the one that was scalded.

Q. Was it so applied to that skin?

A. So as I understand.

Q. Do you mean it was so applied to that skin?

A. So I was told; I don't know of myself.

Q. Was the exhibit, to which the liquor was so applied as you were told, one produced by yourself, or some one else, on that trial?

A. Some one else.

Q. Did you ever apply the liquor when at or near the boiling-point, to a skin?

A. I have with one skin.

Q. Did it injure the skin?

A. Yes; I knowed that afore I put' em in.

Q. You mean to say, then, that before applying this hot liquor to the skin, you knew it would injure it?

A. I did.

Q. If fat liquor be heated to or near the boiling-point and then allowed to cool sufficiently to be usable, may not the oil or grease that rises to the surface be mixed with the rest of the liquor by agitation or stirring, so as to render the whole body uniform and the emulsion perfect?

A. No, sir.

Q. Are the sides of this wood and coal house, spoken of by you on your direct examination, boarded up any part or all the distance?

A. Where I keep the coal, it is boarded up.

Q. What is the length of the whole building?

A. I believe it is 55 feet.

Q. Where you keep the coal is it boarded up on both sides or only on one side?

A. Is boarded up on both sides and both ends.
Q. For what distance on the sides?
A. I think from 15 to 20 feet.
Q. Is it boarded up on either side, or either end, or in any other place, except where you have now spoken of?
A. Two sliding doors on broad side, and both ends closed up.
Q. Including the sliding doors, it is all enclosed on the sides, when the doors are shut, is it not?
A. No, sir.
Q. What portion of the sides are not enclosed?
A. I think about twenty feet.
275 Q. You mean that there are about 20 feet of that building which are not enclosed on either side, but only a roof over?
A. Both sides is open.
Q. Q. Are the doors you speak of on the side or across the building?
A. On the side.
Q. Are they on the side next the coal-house?
A. They be.
Q. Do you mean that these doors make one side of the coal-house or part of the coal-house?
A. They have nothing at all to do with the coal-house.
Q. Which way does the building run?
A. East and west.
Q. On which side are these doors you speak of, north or south?
A. One on the north and one on the south.
Q. Then you mean that the doors are on opposite sides of the building, do you?
A. Yes, sir.
Q. Is the coal-house in that part of the building next to the other building, or is it at the farther end?
A. It is next to the other building.
Q. Are these doors you speak of beyond the coal-house going from the other building?
A. They are.
Q. And do these doors occupy all the space on the sides after you get beyond the coal-house?
A. Yes.
Q. Then when the doors are closed there are no vacant spaces on the sides, are there?
A. No more than where I kept my wood too.
Q. Then, in one end of this building and beyond the doors going from the other building there is a wood-house or shed?
A. Yes.
Q. Between the space enclosed by the doors and that portion occupied as a wood-shed is there a partition across?
A. There is a partition across between the drive-way and coal and wood shed.
Q. How many partitions are there across this building besides the ends?
A. Two.
Q. And where are they?
A. One separates the coal from the wood and the other the drive-way.
Q. In which of these rooms was the fat liquor kept?
A. In the drive-way.
Q. In which room was the tub into which you say fat liquor was emptied?

A. In the drive-way, or what you may call the tan shop. Some call it the drive-way and some call it the tan-shop.

Q. Did you do tanning in that room?

A. I did.

Q. Did you prepare skins in there for shaving in that room?

A. I have.

Q. Did you in some instances apply fat liquor to the skins before shaving?

A. Not there, I didn't.

Q. Have you been in the habit of doing so occasionally in your experience?

A. I have.

Q. Have you applied fat liquor, either alone or with other ingredients, to dampen down the skin to prepare it for shaving?

A. Not for shaving; I have for finishing.

Q. Is not shaving of the skins included in the term finishing?

A. Some they call it so, and I've called it so before now.

Q. Have you not testified on your examination in this case that in your use of the term "finishing," in your testimony here, you included shaving?

A. Yes; I have.

276 Q. Have you in any instances applied fat liquor to the skins before shaving, and to the same skins after shaving?

A. No, sir.

Q. How was the fat liquor conveyed from that room in the wood-shed building to the tub in the splitting-room where the skins were treated, you had spoken of?

A. Rolled in in barrels. If any of the barrels were leaky, and put into a tub, then it is moved from there in pails.

Q. Where did Green get the hot water he carried into that room, in the wood-shed building?

A. Out of my steam tub in the splitting-shop.

Q. When asked on your direct examination to state the effect produced upon the skins by the application of fat liquor in the several instances mentioned of its application by you after your removal to Gloversville and prior to 1869, why did you not mention the removal of the squeak?

(Objected to by defendants' counsel.)

A. Because there was some squeak in them—them that I finished and buffed off. I only applied it on one side; sometimes there was some squeak in some on 'em.

Q. On your direct examination you speak of a preparation by yourself, composed of one bar of soap, one gallon of oil, one pound of sal-soda, dissolved in one gallon of water, which you say you generally used on kid-skins. Is that the preparation you refer to when you say you manufactured fat liquor every four weeks since twenty-seven years ago?

A. Yes, sir.

Q. Taking the formula given by you on your direct examination for the preparation of this compound, what quantity would it make when completed ready for use?

A. Eight gallons.

Q. How much oil do you reckon in that estimate?

A. One gallon.

Q. Then this compound is made of one bar of soap, one gallon of

sperm or neat's-foot oil, one pound of sal-soda, dissolved in water, the whole put together and boiled, is it?

A. No, sir.

Q. Give the number of gallons each, of the liquids entering into this compound.

A. One gallon of oil, three gallons of water, not anything else of the liquids.

Q. Then you say this quantity of liquids with the other ingredients put in and mixed together will make eight gallons, do you?

A. No, sir.

Q. Of what consistency or thickness was this liquid when prepared ready for use?

A. Was very thick—so you could cut it with the knife.

Q. Is it what is sometimes called by kid-dressers "gum?"

A. Yes, sir.

Q. Is it applied to the surface of kid-skins, and mainly for the purpose to give them a smooth, good surface?

A. It is used for that, but is not all it is used for.

(Counsel for defendants insist to receive the latter part of the last answer, but objected to by counsel for plaintiff as not embraced in his question, nor responsive thereto.)

277 Q. Is it applied to the surface of the skins?

A. It is.

Q. Is it applied to all colors of kid-skins, or only to certain colors?

A. Only to certain colors.

Q. What colors?

A. Blacks and some dark colors.

Q. What other colors of kids are there besides the black and dark?

A. There are forty or fifty different colors—are as many as a person is a mind to make.

Q. Are all these different colors you speak of tanned and prepared in the same way as the black and dark, except the coloring?

A. They are.

Q. Is the leather (made into the other colors) when finished of about the same quality as the black and dark colored when finished?

A. No, sir.

Q. Which is the best leather when finished?

A. The lightest colors.

Q. Is one purpose of putting on this gum to improve the black or dark color?

A. It is.

Q. Are the kid-skins to which you apply this gum generally tanned in alum, salt, and eggs?

A. Yes.

Q. Does the leather thus tanned have squeak in it?

A. Yes.

Q. When you told Mr. Russell to apply fat liquor to bark-tanned sheep and lamb skins, as stated on your direct examination, did you tell him to apply it warm or cold?

A. Neither of it.

Q. Did you give him any directions as to the manner of doing it?

A. I told him to dip it in and hang them out; if they wasn't soft enough, he could repeat it again.

Q. Is that all?

A. That is all I said to him, to the best of my knowledge.

Q. What did he say, if anything, to you in reply?

A. He said he didn't know how to do it.
Q. Anything else?
A. I told him he could do it as well as myself, if he was a mind to.
Q. Is that all?
A. Then I told him to put 'em into fat liquor, hang them out; if they wasn't soft enough to suit him, apply it the same way again.
Q. Is that all that passed between you?
A. That is all, to the best of my knowledge.
(On repeating the question, the witness answered, No, sir; he asked me to color them for him; I told him I would; that is all there was then.)
Q. Have you now stated all that took place on that occasion?
A. I have, to the best of my knowledge.
Q. Did you testify in regard to this interview on the trial at Utica?
A. I believe I did.
Q. Did you there undertake to state the conversation that passed between you and the plaintiff on the occasion referred to?
A. I believe I did.
Q. And the whole of it?
A. To the best of my knowledge.
Q. Did you there testify anything about telling Mr. Russell to apply the fat liquor the second time to the skins, if they were not soft enough?
A. I don't remember whether I did or not.
Q. On being asked there to state this conversation did you answer as follows: "He came there and asked me if I would do some bark-
278 tanned skins for him; why I hadn't done them before. I told him I hadn't had any time at all to do them; I had other business to attend to, but that he could do them as well as I could myself by putting fat liquor to them and hanging them out," or thus in substance?
A. Yes, but one word I don't understand.
Q. Which word is it you don't understand?
A. The words, "why I hadn't done them before."
Q. And when asked what plaintiff said to that, did you answer, in substance, that you did not know as he made any reply?
A. I might, but I don't remember it.
Q. About how long a time did Wm. H. Monroe work at your shop?
A. Only one year.
Q. Won't you state the year as accurately as possible?
A. I think it was somewhere in the neighborhood of 1860, as near as I can think.
Q. Did you see Monroe or your son, or either of them, treat bark-tanned skins more than once during that year?
A. I did.
Q. About how many times, as nearly as you can remember?
A. Two or three times.
Q. In naming the principal manufacturers of mittens and gloves at Gloversville, from the time you commenced business there till the commencement of the war, in 1861, do you profess to have given all the manufacturers in Gloversville during that period?
A. All that I remember at that time.
Q. Do you profess to have named them all in the list you gave on your direct examination?
A. There might have been more there than I gave in. I ain't obliged to know everybody.
Q. Has the business of manufacturing mittens and gloves at Gloversville and vicinity been on the increase since you went to Gloversville, and is it still enlarging?

A. Yes, it has been and is increasing.
Q. Has it become a large and extensive business?
A. Well, it is pretty large; I can't tell how long it will last.
Q. Is it the principal manufacturing place of that kind of goods in the United States?
A. So it is said.
Q. Was your skin exhibit No. 3 treated with cold fat liquor?
A. Yes.
Q. What was the first thing you did to it in the treatment?
A. Put it in cold fat liquor and cold water, mixed together.
Q. How long did it remain in the fat liquor on the first immersion?
A. It might be twenty minutes.
Q. Can you swear how long it was in the fat liquor?
A. No, sir.
Q. With what did you pound it while in the fat liquor?
A. With the pounder.
Q. Please describe the pounder.
A. A piece of wood turned out, with a handle put into it.
Q. What kind of wood, and what shape, and how large was it?
A. I don't know what wood it is; is a little longer than width, is about six inches one way, and about three inches at the top part, and about nine inches long, in the block; handle about two or three feet long.
Q. You mean by "nine inches long" from top to the bottom?
A. Yes.
279 Q. Was it hard or soft wood?
A. Hard wood.
Q. About how long did you apply that to the skins during the first immersion?
A. About twenty minutes.
Q. What was the next step in the preparation of this skin?
A. Hang it out to dry.
Q. How long was it out to dry?
A. For two or three days.
Q. What did you next do?
A. Taken it off the lines.
Q. Then what next?
A. Brought it in the shop.
Q. What next?
A. Put it in the water and fat liquor in the tub.
Q. How long did it remain in the liquor at this time?
A. Twenty-five or thirty minutes.
Q. Did you pound it during this immersion with the pounder before described?
A. Yes; I did.
Q. What next?
A. Taken it out the tub, hanged it up to dry; when it was dry taken it in, dampened it down, and staked it.
Q. With what did you dampen it down?
A. In sawdust.
Q. Dry sawdust?
A. No, sir.
Q. In what condition was the sawdust?
A. Was water put in it.
Q. Had it been dampened with anything but water?
A. No, sir.
Q. How long did it remain in the sawdust?

A. It might been in there half an hour.
Q. How long was it in?
A. I can't tell; I never stood there with a watch open.
Q. How long was it from the time you took this skin in hand to treat before it was ready to stake?
A. About a week.
Q. Have you now described all you did to it before it was ready for staking?
A. I have, to the best of my knowledge.
Q. On the trial at Utica, did you introduce as an exhibit a bark-tanned sheep or lamb skin, which you had treated with cold fat liquor?
A. I believe I did.
Q. Did you treat that one as you did the one just described, or differently; and, if so, how?
A. I don't remember.
Q. Did you treat your skin, Exhibit No. 4, in the same way you have described No. 3?
A. I treated them both together.
Q. And did you give both the same treatment?
A. I did.
Q. Did you treat the skin, Exhibit No. 5, in the same way as Nos. 3 and 4, with the exception of using warm water?
A. Yes.
Q. Did you treat No. 5 at the same time with Nos. 3 and 4?
A. I treated them the same time, but not together.
Q. How long did No. 5 remain in the liquor at each immersion?
A. About 15 minutes.
Q. In this case did you use any cold water in connection with warm water and fat liquor?
A. I believe I did.
Q. You mean to testify positively that you did?
A. No; I wouldn't.
Q. On your direct examination, in describing the treatment of this skin, did you say that you "took two bowls of lukewarm water and one bowl of cold fat liquor and put them together?"
A. I believe I did.
Q. And did you say that the liquor thus prepared was "about blood-heat?"
A. I did.
280 Q. Did you say anything about adding cold water in its preparation?
A. I don't remember whether I did or not now.
Q. Can you now say whether you did or did not add any cold water to the liquor?
A. I can't.
Q. In the treatment of the skin, Exhibit No. 6, produced by you, did you use warm or cold water with the fat liquor?
A. I can't say whether I put any cold water in it or not. I had it the heat I wanted it.
Q. In describing on your direct examination how you prepared the liquor for the treatment of this skin, did you say in substance that you "took two bowls of warm water and one bowl of fat liquor, and put it into a tub, and put the skin in?"
A. I don't remember; I might have said so.
Q. How long was this skin in the liquor at each immersion?

A. About 15 minutes the first time, and might be 20 minutes the last time.

Q. Was it treated with and subjected to the same treatment as No. 5?

A. It was; both were treated warm; both warm ones were treated together.

Q. In the treatment of the two skins, in which you used warm water, as you have stated, did you mix any cold water with the liquor before immersing the skins in it?

A. I don't remember; I might.

Q. Were all these six exhibits No. one skins?

A. They all came from a No. one bale, but one of them I would not call a No. one skin.

Q. Which one is that?

A. It is a shaved lamb-skin; I don't know now whether it was No. one or two.

Q. Were all the rest of these exhibits No. one skins in fact?

A. They was.

Q. Are the bark-tanned unshaved skins generally numbered when you buy them?

A. I never buy any.

Q. Are the bark-tanned sheep and lamb skins usually sold in bales in the bark-tanned state?

A. They are.

Q. Is that the case with the unshaved ones, or does that apply only to those that are shaved?

A. Shaved and unshaved come in bales.

Q. Do the unshaved ones, that come in bales, generally come numbered, as the shaved ones do?

A. Both come in the same way as Nos. ones, twos, or threes.

Q. Do they run uniformly as to quality; that is, all the skins in a bale?

A. No, sir.

Q. Is there often a considerable difference in the quality of the skins in a bale?

A. There is.

Q. In your direct examination, did you testify in substance that the cost or expense of treating skins with fat liquor in the manner you stated was one dollar per dozen for lambs and one fifty for sheep; do you mean that was the actual cost, or your charges for doing it?

A. My charges for doing it.

On his redirect examination by defendants' counsel, the witness further testified as follows:

Q. State what is the actual cost, in your judgment, of the
281 necessary labor and materials in treating bark-tanned sheep and lamb skins, as you have described.

(Objected to by plaintiff's counsel.)

A. Ninety cents per dozen for lambs, and one dollar and forty cents for sheep.

Q. Did you ever heat to, or near the boiling-point, the fat liquor manufactured by you as you have stated?

(Objected to by plaintiff's counsel.)

A. No, sir.

Q. For what use or purpose did you keep the tub in the drive-way, in the wood-shed, or coal-house?

A. There is where I keep 'em out of the heat.

Q. (Question repeated.)

A. For to dampen the skins for shaving, or sometimes to dip them for shaving.

Q. What other use, if any, did you make of this tub in that place?

A. To tan skins in it.

Q. With what?

A. Hemlock bark.

Q. You have stated on your cross-examination that you have sometimes mixed sal-soda and soap with the fat liquor. Will you explain more fully, if you are able, what you mean, and the circumstances under which you mixed the sal-soda and soap with the fat liquor?

(Objected to by plaintiff's counsel.)

A. I got fat liquor; it is getting sour. I get some sal-soda and soap and put it together; it will restore it again, and if my fat liquor is mostly used out, and I want to make more of it then I will add soap and sal-soda and water, and put it together to make it more.

Q. When, and under what circumstances, have you used ammonia in the treatment of skins? I mean bark-tanned sheep and lamb skins.

(Objected to by plaintiff's counsel.)

A. When the skins are tanned in hot liquor sometimes they are drawn up, or bark-bound as they call it; I make a solution of carbonate of ammonia, put it into a tub and put the skins into it.

Q. When you answered in your cross-examination, in substance, that you did not use anything else but fat liquor and water, to what instances of skins did you refer?

(Objected to by plaintiff's counsel.)

A. Any kind of skins that I tread up in fat liquor and water; all kinds of skins?

Q. When in treating bark-tanned skins you tread them, did you subject them to treatment in the drum?

A. No, sir.

Q. You speak in your cross-examination of having declined to disclose some secret process or ingredients used by you, on your examination at Utica. Will you state what such secret process or ingredient is?

A. Carbonate of ammonia, oil of vitriol, common salt.

Q. When you speak of using your secret process or ingredients, with eggs, and sometimes without eggs, state particularly how you used it, and the kind and character of skins on which you used it.

(Objected to by plaintiff's counsel.)

282 A. Make a solution of vitr'ol and salt, put my skins in it, the hardest skins that I got, drain all the water out on 'em; get some eggs, crack them; separate the white from the yolk, put in a little oil with it, beat it together till the eggs have killed the oil, put some warm water with it, put it into a tub, put the skins in, stir them up, put them in the drum or tread them, as you are a mind; let them run about half an hour in the drum; take them out and hang them out.

Q. State whether or not the James Chapman who testified as a witness in this case, is the same Chapman who was a member of the firm of Chapman & Warren, of Amsterdam, when you treated bark-tanned skins for that firm, as you have stated, in 1857 or 1858.

A. Yes.

Q. In reply to a question on your cross-examination, as to how many bark-tanned sheep and lamb skins you treated with fat liquor in the year 1869, you say twenty-five dozen for Daniel B. Judson; state whether you treated any others that year for him, and if so how many?

(Objected to by plaintiff's counsel.)

A. One hundred dozen California sheep.

Q. Any others for him that year?
(Objected to by plaintiff's counsel.)
A. I did.
Q. How many more?
A. One hundred and fifty dozen.
Q. Are the hundred dozen California sheep the ones you tanned in bark?
(Objected to by plaintiff's counsel.)
A. They was.
Q. Why did you manufacture your own fat liquor for the treatment of these?
(Objected to by plaintiff's counsel.)
A. They was newly tanned; was too much alkali in the fat liquor you get from the mills.
Q. State why in treating bark-tanned sheep and lamb skins with fat liquor, you have sometimes dipped the skins into the fat liquor and sometimes put it on with the sponge or brush; state particularly.
(Objected to by plaintiff's counsel.)
A. Broken grained ones was thrown out; them I done over with the brush; made the flesh for the face side; the others, the grain was good; they was cut up with the grain outside.
Q. State how the fat liquor was applied to those that were cut up with the grain outside.
A. Put into the tub and trod into it.
Q. What, if anything, was in the tub?
A. Fat liquor and water.
Q. In the cases, when in finishing the skins you buffed them, how did you apply the fat liquor?
(Objected to by plaintiff's counsel.)
283 A. On the grain side, very carefully, so as there shouldn't any get through on the flesh side. If there was, the buff wouldn't look clear on them.
Q. How did you apply the fat liquor to these?
(Objected to by plaintiff's counsel.)
A. With a brush.
Q. Why with a brush?
(Objected to by plaintiff's counsel.)
A. Because I would take up less liquor with it than I would with a sponge.
Q. State the different ingredients and liquids used by you in the manufacture of fat liquor, as stated by you, and the quantity of each.
(Objected to by plaintiff's counsel.)
A. One bar of soap, two gallons of water, one pound of sal-soda dissolved in a gallon of water, and one gallon of neat's-foot oil; when the sal-soda is dissolved, add it to the one gallon of oil. When the soap is dissolved put it in with the oil and sal-soda, beat it up together. When it is getting cold add three or four more gallons of water to it, stir it till it is almost cold; then it is fit for use. If I want to use it on bark-tans I take one gallon of that fat liquor, put in two gallons of water with it, beat it together, or beat it up, as you are a mind to call it, then that is fit for use.
Q. Were the Exhibits Nos. 1, 2, 3, 4, 5, and 6, or any of them, before you for examination, when you were testifying yesterday on cross-examination in regard to their treatment?
A. No, sir.

On his recross-examination by plaintiff's counsel, the witness further testified as follows:

Q. How many tubs were kept in the room, in the coal-house, or driveway, which you call the tan-room?

A. Sometimes three and sometimes four, and sometimes none at all.

Q. You mean, do you, that at times there were three or four there at a time?

A. There was.

Q. On the trial at Utica, in describing your treatment of bark-tanned sheep and lamb skins, did you say, in substance, that you did not use salt, that you did not want to use it?

A. I did.

Q. Did you mean to be understood as testifying, on your redirect examination yesterday, in this case, that you had not used eggs in the treatment of bark-tanned sheep and lamb skins, except in connection with your secret process?

A. I don't know very well how to answer that, (and then added, "please read the question over again.")

(Which latter part of said answer or request was insisted upon by defendants' counsel to be entered or added to witness's answer, to which plaintiff's counsel objected, and plaintiff's counsel also requested that an entry be made that the question had already been read over several times.)

Q. Question repeated.

284 A. On re-reading the question, the witness answered as follows: I do mean to be so understood to the best of my knowledge.

Q. Did you ever use eggs with any other ingredients when you did not use your secret process?

A. I did not to the best of my knowledge.

Q. Did you not at Utica testify, in substance, that you had used eggs when you had not used your secret process?

A. I don't remember.

Q. Will you swear that you did not so testify?

A. No, sir.

Q. Have you ever used your secret process when you did not use it with eggs?

A. I have.

Q. Was ammonia any part of your secret process?

A. It is.

Q. Did you use oil of vitr'ol and salt without ammonia with it?

A. Yes.

Q. Did you use ammonia without the oil of vitr'ol and salt?

A. Yes.

Q. When you use solution of vitr'ol and salt in connection with eggs and oil, you think it is the eggs that kills the oil, do you?

A. I don't use vitr'ol and eggs with salt and oil. I use it separate, and the eggs kills the oil.

Q. Do you use eggs and oil together?

A. I do.

Q. And have you been in the habit of doing so for many years past?

A. I have.

Q. And in such cases you think the eggs kill the oil, do you?

A. It cuts it.

Q. You have been testifying about the eggs killing the oil. What I

desire to know is whether it is in cases where you use oil and eggs together that you say the eggs kill the oil?

A. I say it is commonly called in the trade "the eggs kill the oil." The oily substance is so killed as the eggs and oil work together.

Q. I repeat, when you speak of the eggs killing the oil, do you refer to cases where you used the eggs and oil together?

A. Yes, sir.

Q. Do you refer to cases where you use the oil and eggs together, without any other ingredient being mixed with them?

A. Yes, sir.

Q. And do you refer to the use of eggs and oil on bark-tanned sheep and lamb skins?

A. Yes; and on kid-stock, too.

Q. Are the bark-tanned skins of which you speak on your redirect examination as having been done by you for Daniel B. Judson in 1869 the same that you referred to on your direct examination as having been done nearly four years ago for him?

A. No, sir; not the same lot.

Q. What lot did you refer to on your direct examination as having done for him nearly four years ago?

A. The twenty-five dozen bark-tans.

Q. Did you on your direct examination say anything about any others done for Daniel B. Judson in 1869 except the 25 dozen?

A. I did a hundred dozen bark-tanned California skins for him in 1869.

Q. Was this hundred dozen a part or the whole of the lot referred to by you on your direct examination, when you spoke of having done a lot for him nearly four years ago?

A. This is part of the lot.

285 Q. Of what number did the whole lot consist?

A. Two or three hundred dozen.

Q. Which?

A. I believe there was 275 dozen on 'em.

Q. Did you in your direct examination speak of them as a lot of 300?

A. No, sir.

Q. Did you refer to them as a lot of 300 dozen?

A. I guess not. I guess I didn't. I think I said a lot of about 250 dozen.

Q. Will you testify that you did not refer to them as a lot of 300 dozen?

A. No, sir.

Q. Was this the lot referred to by you of bark-tanning a hundred dozen of them yourself?

A. Yes, I tanned them all myself.

Q. Then whether more or less on the lot, you tanned the whole lo yourself?

A. I did.

Q. Do you include the 25 dozen spoken of by you in this lot?

A. No, sir.

Q. Did you tan them all in one lot or in different lots?

A. Different lots.

Q. In how large lots did you tan them?

A. In the neighborhood of ten dozen.

Q. Did you tan them all in the same way?

A. As near as I could.

Q. Were they in fact all tanned substantially in the same way?

A. Yes, sir.

Q. Do you mean to be understood as testifying on your redirect examination that the skins to which you applied the liquor with a brush, spoken of in your evidence in this case, the flesh-side of the skin was finished up as the face-side of the leather?

A. Yes; I did.

Q. In case of the split skins which you have treated and spoken of in your evidence, which side of the skin was finished up as the face-side of the leather?

A. The flesh-side.

Q. In all the cases you have mentioned in your evidence, in which you applied the fat liquor with the brush, did you buff the skins?

A. I believe I did, to the best of my knowledge.

Q. In your charges for dressing skins, spoken of in your evidence as one dollar and one dollar fifty per dozen, were these cash or January charges, that is, payable on the first day of January, as is usual in that business, at Gloversville?

A. Was January charges.

Q. Will you now please take in hand the exhibits produced by you, Nos. one to six, inclusive, and with them before you, state in what particular, if any, you wish to change, modify, or explain your evidence given in relation to them on your cross-examination?

A. The only thing I want to modify is that I will not swear that positively that I put in a bowl of cold water.

his
SAMUEL + DODGE.
mark.

Taken, subscribed, and sworn, this 28th day of December, 1872, before me.

J. WENDELL,
Special Examiner.

Adjourned by consent to Feb. 25, 1873, 10 a. m.

286 SAMUEL DODGE, Jr., a witness produced, sworn, and examined by and in behalf of the defendant, testified as follows, to wit:

I am one of the firm of Samuel Dodge & Son, and one of the defendants in this case. I have been a member of this firm for six years. Our business is kid-dressing. I have worked at that business about fifteen years. My present age is twenty-seven years past; will be twenty-eight in June. I am acquainted with a leather used in Gloversville in the mitten and glove trade known as bark-tanned sheep and lamb skins. I am acquainted with an article used in the dressing of mitten and glove leather known as fat liquor. I have knowledge of the use of fat liquor in preparing bark-tanned sheep and lamb skins for mittens and gloves. I first knew of its use for that purpose in 1868. (Here counsel for defendant said "1868?") Witness then said "1858."

Q. Where and by whom was it used in 1858?

A. In my father's shop in Gloversville, and used by him.

Q. Is Samuel Dodge, sen., one of the defendants in this cause, your father?

A. He is.

Q. State, if you know, how the fat liquor used by him in 1858 was prepared for use, and how applied to the bark-tanned sheep and lamb skins.

A. First take some water and heated, pour some fat liquor into it till it got to the heat he wanted to use it. Then he put it into a tub, put the skins into it and tread them or pound them with a pounder, and sometimes he would brush the liquor on with a brush, them that he didn't dip.

Q. State, as near as you can, the temperature of the liquor, when applied to the skins.

A. I should think not quite blood-heat.

Q. State, if you know, the treatment of the skins after the application of the fat liquor to them.

A. After they were tread or pounded enough to satisfy him, they were taken out of the tub and hung out on the lines, and when dry, were taken into the shop and dampened and staked. They were then ready for cutting.

Q. What effect, if any, was produced upon the bark-tanned sheep and lamb skins, by such treatment?

A. It made them soft, and took the squeak out of them.

Q. For what purpose were they then suitable?

A. Were suitable for mittens and gloves.

Q. If your father continued to treat such skins with fat liquor at his kid-shop in Gloversville for any length of time after the year 1858 to your knowledge, state for how long a time.

A. Till 1860.

Q. State, if you know, how your father treated the bark-tanned sheep and lamb skins from 1858 to 1868.

A. With fat liquor and warm water, as I have stated, as far as I know.

287 Q. Did your father quit treating this class of skins with fat liquor in 1860; and, if so, for how long a time?

(Objected to by plaintiff's counsel.)

A. He did quit in 1860 or during that year.

Q. When, if ever, did he resume the treatment of such skins with fat liquor?

A. In 1862.

Q. And continued for how long?

A. Up to the present time.

Q. Who, if any person, carried on the business of treating bark-tanned sheep and lamb skins with fat liquor, at your father's shops at Gloversville, from the time he discontinued that business, in 1860, to the time he resumed it in 1862?

A. Myself and William H. Monroe.

Q. The Wm. H. Monroe who has been sworn as a witness in this case?

A. Yes, sir.

Q. To what extent did Monroe and yourself treat bark-tanned sheep and lamb skins with fat liquor during the time you carried on business? Give the number of skins, as near as you are able.

A. In the neighborhood of one hundred and fifty dozen.

Q. State how Monroe and you prepared the liquor, and how you applied it.

A. Took warm water and fat liquor, mixed together, and put into a tub and put the skins in and pounded them with a pounder, and when pounded enough we hung them out on the lines. Them that we did not dip we took the liquor, prepared as I have stated, and took a brush and brushed it on the grain, and then hung them out to dry.

Q. When did you first use a drum in your business?

A. I think it was in 1864 or 1865.

Q. State the names of such persons as you remember for whom your father treated bark-tanned sheep and lamb skins with fat liquor prior to six years ago.

A. Norman Beldon, Reuben B. Squires, Willard Rose, Daniel B. Judson, Edgar W. Dunson, and Samuel Gilchrist, P. C. and D. G. Heacock. That is all I remember.

Q. State, as far as you can remember, the names of the persons for whom your firm have treated bark-tanned sheep and lamb skins with fat liquor, prior to the year 1869.

A. Daniel B. Judson, Solomon Jeffers, Albert Klein, Isaac V. Place & Co., D. S. Farr & Son. That is as far as I remember just now.

Q. Were the several persons and firms for whom your father, Monroe, and yourself, and the firm of S. Dodge & Son treated bark-tanned sheep and lamb skins, as you have stated, engaged in the business of manufacturing mittens and gloves at Gloversville, or vicinity, at the time of such treatment? State, if you know.

A. They was.

Q. State, as far as you remember, the names of the persons for whom Monroe and you treated bark-tanned sheep and lamb skins with fat liquor during the time you carried on that business, as you have stated.

288 A. L. D. Nickerson, and the other parties I don't know, as Monroe did that part of the business.

Q. Were the persons for whom Monroe and you treated skins engaged, at the time, in the manufacture of mittens and gloves; and, if so, where?

(Objected to by plaintiff's counsel.)

A. Nickerson was. The other parties I could not say whether they were or not. Nickerson was at Gloversville.

Q. Do you know the building on the premises of your firm known as the coal-house or wood-shed building, at Gloversville?

A. I do.

Q. Did you ever use, or was there ever used, to your knowledge, by any other person or persons, any fat liquor on bark-tanned sheep or lamb skins in this wood-shed or coal-house building, or any part of it?

A. I have no knowledge of any being there used, nor have I ever used any in there.

Q. Do you know Marvin J. Whiting and Frederick S. Green, who were sworn in this case as witnesses?

A. I do.

Q. Were they at one time in the employ of your firm, at your kid-shops at Gloversville?

A. They was.

Q. Did they, or either of them, ever assist you or assist any other person or persons, to your knowledge, in treating bark-tanned sheep or lamb skins with fat liquor in this wood-shed or coal-house building, or any part of it?

A. They did not.

Q. In what building or room did your firm carry on the business of treating bark-tanned sheep and lamb skins with fat liquor?

A. In the shop that we call the "splitting-shop."

Q. Always in that shop?

A. Since we have been down there in that new building. We have been there ten years.

Q. If the witness' Whiting or Green, or either of them, assisted you

in any work upon skins in the wood-shed or coal-house building, state, if you know, what work it was and upon what skins.

(Objected to by plaintiff's counsel.)

A. They did. They help me wet down skins for shaving—bark-tanned sheep and lamb skins.

Q. Wet down with what, and how?

A. With soap and warm water; taken the soap and cut it up and boil it till dissolved, then put it in a tub with some water and put the skins in to soak.

Q. In what tub?

A. Tub in the shed.

Q. State, if you are able, the cost per dozen skins of treating bark-tanned sheep and lamb skins with fat liquor.

(Objected to by plaintiff's counsel.)

A. About a dollar a dozen for lamb and from ten to twelve shillings for sheep.

On his cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

289 Q. How old were you when you saw the first lot of bark-tanned sheep and lamb skins treated, as you have described, with fat liquor?

A. Thirteen or fourteen years old.

Q. Won't you state which?

A. Thirteen.

Q. Who treated this lot?

A. Father.

Q. Who assisted him?

A. I believe it was Michael McDonald.

Q. Did you assist?

A. I did not.

Q. For whom was this job done?

A. For Dunson, I believe.

Q. Do you know of your own knowledge?

A. I am not certain that it was this lot.

Q. Of how many did this lot consist?

A. I couldn't say.

Q. Did you see them before or after they were treated?

A. I saw them before and after, too.

Q. Where were they after treatment when you saw them?

A. On the lines.

Q. You did not put them there?

A. No, sir.

Q. You did not take them from the lines?

A. I did not.

Q. Did you make any examination of them after treatment when hanging on the lines?

A. No more than help stake them.

Q. Did you help prepare the liquor for treating them?

A. No, sir.

Q. Were you by all the time when it was being prepared, from beginning to end?

A. I can't say as I was.

Q. Can you swear then positively, of your own knowledge, that there was no other ingredient in the liquor with which these skins were treated than fat liquor and water?

A. I cannot.
Q. Where, and at what season of the year, was this lot treated?
A. Was in father's shop, in Gloversville, and was in the spring of the year 1858.
Q. When was the next lot treated which you now remember?
A. The same year, towards fall.
Q. Who treated this lot?
A. Father.
Q. Who assisted him?
A. I did.
Q. Anybody else?
A. Not to my knowledge.
Q. Do you know whether there did or did not any one else assist him?
A. I do not.
Q. Of how many skins did this lot consist?
A. I think in the nighborhood of fifteen to twenty dozen.
Q. Can you swear with any degree of definiteness or certainty as to the number?
A. I am not certain if there were that many or not.
Q. For whom was this job done?
A. Samuel Gilchrist.
Q. Where is Gilchrist now?
A. I suppose he is in his grave.
Q. Where is Dunson, to whom you referred?
A. A. He is in his grave, too.
Q. When was the next lot treated you remember of?
A. In 1859.
Q. What month?
A. I don't know as I can remember; was towards fall.
Q. Whose were these?
A. Were P. C. and D. G. Heacock, of Kingsboro.
A. How many were there in this lot?
A. I couldn't say how many.
Q. Say as near as you can of your knowledge and memory.
A. Twenty dozen.
Q. Who assisted in treating these?
A. Father.
Q. Anybody else?
290 A. Myself, and I believe Michael McDonald.
Q. In the treatment of these three lots, of which you have now spoken on your cross-examination, how long a time elapsed from commencing the preparation of the liquor until the skins were ready to hang out on the lines?
A. I could not say; did not time them.
Q. State as near as you can from your personal knowledge and memory.
A. From an hour to an hour and a half.
Q. In the treatment of the last two lots spoken of were you present all the time from the commencement to the conclusion of the job?
A. Pretty much all the time.
Q. In answering "pretty much all the time," do you mean to be understood as not all the time?
A. I mean to be understood as not "all the time;" I might have been out while they was treading.
Q. Will you now swear positively that you was present the whole of the time, or not away at all, except when the skins were being trodden?

A. No, sir; I will not.
Q. Who prepared the liquor for these two lots?
A. Father.
Q. Can you swear positively, from your own personal knowledge, that no ingredient was used or put into the liquor except fat liquor and water?
A. I have no knowledge of seeing anything else put in.
(To which answer plaintiff, by his counsel, objected as not responsive, but insisted on by defendant. Whereupon, at the request of plaintiff's counsel, the question was repeated, and the witness answered.)
A. I cannot.
Q. Did you test the temperature of the liquor in any of these instances with the thermometer?
A. I did not.
Q. Are you able to state the temperature of the liquor, except from general recollection?
A. I am not.
Q. When was the next lot treated with fat liquor that you referred to on your direct?
A. In 1860.
Q. What month in 1860?
A. I could not say what month; was in the spring.
Q. For whom?
A. L. D. Nickerson.
Q. Of how many did this lot consist?
A. Fifteen dozen.
Q. Where is L. D. Nickerson?
A. I don't know; he is not about Gloversville or vicinity.
Q. Who prepared this liquor for this lot?
A. Monroe and myself.
Q. Were the first three lots mentioned all that your father did in 1858 and 1859, and prior to Monroe's coming in?
A. I should think not.
Q. If not, state any others he did during the years 1858 and 1859, and before Monroe came in.
A. I don't know as I can state any lot, but I know he done more or less every year.
Q. Can you swear to any other lots treated by your father in 1858 and 1859, except the three already mentioned on your cross-examination?
A. I cannot.
Q. During the years 1858 and 1859, did your father treat bark-tanned sheep or lamb skins in any other manner or with any other mate-
291 rials or ingredients than fat liquor or fat liquor and water?
A. I don't know.
Q. Do you know whether during that period any other bark-tanned skins than those mentioned by you in your cross-examination were brought to your father's premises for treatment?
A. I don't know as I do.
Q. Do you not know, then, whether there were or were not?
A. No.
Q. Were you there all the time during those two years engaged in your father's business?
A. No, sir.
Q. What portion of the time were you there, and what portion absent?
A. I couldn't say.
Q. Say as well as you are able to from memory.

A. Probably there one-third of the time.
Q. Where were you the other two-thirds of the time?
A. At school.
Q. Then the first lot you did after Monroe came in was in the spring of 1860, and for Nickerson?
A. Yes, sir.
Q. When did Monroe come in there, and when did he leave?
A. He came there in 1859, and I believe he left in 1862. He came towards the fall of 1859, I believe; he left some time in January, 1862.
Q. When was the second lot treated by you and Monroe with fat liquor? State the time as definitely as possible.
A. About a week after the first lot, in the same year.
Q. For whom, and of how many did the lot consist.
A. For L. D. Nickerson; consisted in the neighborhood of twenty-five dozen.
Q. When was the third lot treated by you and Monroe, of how many did it consist, and for whom was the job done?
A. In about two weeks after the second lot; consisted in the neighborhood of thirty dozen. I don't know for whom the job was done.
Q. When and for whom was the next lot done by you and Monroe, and of how many did it consist?
A. I think in about two weeks after the third lot; could not say how many in that lot.
Q. Who for?
A. For L. D. Nickerson.
Q. State the number as nearly as you can, from memory.
A. I should think there were about fifty dozen.
Q. State the next lot treated by you and Monroe; when; for whom, and the number.
A. I did not treat any more with Monroe.
Q. Then the whole of the skins that you treated with Monroe, referred to on your direct examination, were done within the space of about six weeks, and in the spring of 1860, were they?
A. Yes, sir. In that neighborhood.
Q. Do you speak of these lots treated by you and Monroe from memory?
A. Yes, sir.
Q. Did you and Monroe, or either of you, treat any bark-tanned sheep or lamb skins with fat liquor, other than those already mentioned by you on your cross-examination, during the period he was with you, from the fall of 1859 to January, 1862?
A. Yes, sir.
Q. Which of you?
A. Myself.
Q. When the first, of how many did the lot consist, and for
292 whom were they done?
A. In the spring of 1862, for Geo. Nickloy; were about 20 dozen.
Q. State the next lot.
A. That is all that I did.
Q. What time in the spring of 1862 was this?
A. The latter part.
Q. Were these several lots treated by you and Monroe, and by yourself alone, all treated in the same manner or differently?
A. Differently.
Q. How differently?

A. Some dipped and some brushed on.

Q. About how many in these lots were dipped and how many brushed?

A. I should think there were a third of them dipped and the rest brushed.

Q. Can you now discriminate which lots were dipped and which brushed?

A. A part of each lot were dipped and part brushed.

Q. Were those that were brushed designed for buffing?

A. No, sir.

Q. In what capacity was Mr. Monroe there?

A. He was learning the trade of kid-dressing.

Q. During the time Monroe was there, did he or yourself treat any bark-tanned sheep or lamb skins in any other manner or with any other material than fat liquor or fat liquor and water?

A. Yes, sir.

Q. Which of you, and how were such skins treated?

A. Mr. Monroe treated with weak lime liquor.

Q. Were these designed for gloves?

A. I believe they were.

Q. How many lots did he treat in this way?

A. I couldn't say.

Q. Did he more than one?

A. I couldn't say.

Q. Were those he treated in lime-water treated in any other way, or subjected to any other process, to prepare them for gloves; and, if so, what?

A. I don't know.

Q. Did Monroe, while there, treat bark-tanned skins in any other manner or by any other process than those already mentioned by you; and, if so, what?

A. I could not say whether he did or not.

Q. Were any of the skins treated by you and Monroe of which you have spoken, or which you have not mentioned, (if any such there be,) subjected to lime-water?

A. Not as I remember.

Q. Can you swear that they were not?

A. No, sir.

Q. Of whom was Monroe learning the trade of kid-dressing?

A. Of father.

Q. Was he with you or your father at any other time than that mentioned by you between 1859 and 1862?

A. Not as I remember.

Q. During the time that Monroe was there, did your father treat any bark-tanned sheep or lamb skins with fat liquor or otherwise?

A. Not as I remember.

Q. Do you profess to know, and are you willing to swear, whether your father did or did not, from 1858 to 1862, treat bark-tanned sheep and lamb skins as a preparation for gloves by other materials, ingredients, or processes than fat liquor or fat liquor and water?

A. I don't know whether he did or not.

Q. What is the first lot, of which you can now speak definitely, that your father treated with fat liquor in 1862?

293 A. A lot of bark-tanned sheep-skins.

Q. State the time definitely, the number, and for whom done.

A. Was towards the fall, was about ten dozen, for W. B. Squires.

Q. State the next lot, for whom, and how many.

A. The next lot was in the summer of 1863, for Jonathan Ricketts; cannot state the number.

Q. State the next lot, for whom, and how many.

A. The next lot was in the spring of 1864, for Norman Belden; should think were about fifteen dozen.

Q. State the next lot, for whom, and the number.

A. In the summer of 1865, for P. C. and D. G. Heacock; don't recollect the number.

Q. Where is Norman Belden?

A. I don't know.

Q. Is he anywhere about Gloversville?

A. I don't know whether he is or not.

Q. What is your understanding on that subject?

A. I have no understanding about it.

Q. Do you understand that he is or has been in the lunatic asylum within the last few years?

A. I have understood he has been there.

Q. Have you ever understood he was discharged and out?

A. No, sir.

Q. State the next lot you remember, treated by your father, with fat liquor, the time when, definitely, for whom, and how many.

A. In the spring of 1856, for Joseph Heacock; I don't know how many.

Q. Where is Mr. Joseph Heacock?

I don't know.

Q. Do you understand that he has removed and lives somewhere in the Southern States?

A. I do.

Q. State the next lot treated by your father, the time when, for whom, and how many.

A. In the fall of 1869, for Daniel B. Judson, from fifteen to twenty dozen.

Q. What time in the fall of 1869? State definitely as possible.

A. I don't know; fore part of fall; that is as definite as I can get at the time.

Q. Are you willing to swear positively it was not as late as November?

A. No, sir.

Q. From the first lot now mentioned by you, as treated by your father in the fall of 1862, down to the last lot treated in the fall of 1869, did your father or your firm treat bark-tanned sheep or lamb skins, as a preparation for gloves, with any other material or ingredient; and, if so, what?

A. Yes, sir; with oil, soap, sal soda, and water.

Q. How many different lots during the period mentioned were treated in this manner?

A. I could not say how many.

Q. Can't you tell whether there were many or few lots?

A. I could not.

Q. Were there more or less treated in that way every year?

A. After 1862, but cannot tell whether there were any done before that or not.

Q. Did you assist in the treatment of these?

A. In some lots I did.

Q. Did you in most of them?

A. No, sir.

Q. Who did treat them in this way?

A. Father, most generally.

Q. Who assisted him, if anybody?

234 Most any of the hands; I don't know as I can mention any particular ones.

Q. Who assisted him in treating those with fat liquor?

A. Sometimes I did, and sometimes some of the other hands.

Q. Can you now mention definitely any lot treated with the oil, sal soda, and soap?

A. Yes, sir.

Q. Please do so; mention all you can distinguish and remember, the times, quantities, and for whom done.

A. For W. B. Squires, in the fall of 1863, was ten or twelve dozen of them; that is all the lot I can remember; may be more; don't remember.

Q. Did your father from 1862 to 1869 treat bark-tanned sheep or lamb skins in any other manner, or by any other process, than those you have already mentioned?

A. I don't know whether he did or not.

Q. Don't you know of the use of eggs by him, during that time, in the treatment of bark-tanned sheep or lamb skins?

A. He may have used eggs, but I don't remember.

Q. Is it or is it not true that in every year, from 1862 to 1869, inclusive, he or your firm treated more or less bark-tanned sheep or lamb skins, as a preparation for gloves, by other processes or materials than fat liquor?

A. We used fat liquor, and the other material besides—what we call gum.

Q. (Question repeated.)

A. No other process than the gums I have just mentioned that I know of.

Q. Will you swear that your father did not, during the period mentioned, use eggs and other materials for the purpose mentioned in the last question?

A. No, sir; I will not swear whether he did or did not.

Q. Do you know Geo. W. Gillett, of Gloversville?

A. I believe I do.

Q. Don't you know whether you do or not?

A. I know the one they call Geo. Gillett by sight.

Q. Has the one you refer to been engaged for some time past in the manufacture of mittens and gloves at Gloversville?

A. He has.

Q. You don't know any other Geo. W. Gillett there than this one?

A. No, sir.

Q. Did he, on or about the year 1868, bring some bark-tanned sheep or lamb skins to your father or your firm, to be treated as a preparation for mittens and gloves?

A. Yes; he brought some skins there, but not for us to treat.

Q. Were they bark-tanned sheep or lamb skins, in the bark-tanned state?

A. Yes.

Q. Did he consult with your father or with you, one or both, in relation to some method or process of treating these skins to fit them for gloves?

A. I don't remember.

Q. Will you swear that he did not?

A. No, sir.

Q. Did you or your father, one or both, talk with him on the subject?

A. Yes.

Q. Both of you? If not, which?

A. It was with myself.

Q. You don't mean to swear your father did not talk with him on the subject?

A. No, sir.

295 Q. Did you suggest to him the use of soap, or eggs, or either or both.

A. I don't remember whether I did or not.

Q. Did he or any one treat these skins on your premises; and, if so, how?

(Objected to by defendant's counsel.)

A. They were treated there by Gillett & Combs, and I think I was there myself when they were treated. They fetched up some oat-meal and mixed it up with some other ingredient, but I don't know what.

Q. Did they use eggs or soap?

A. I don't remember.

Q. Were they trying to soften the skins, and take the squeak out, and fit them for gloves?

(Objected to by defendants' counsel.)

A. I believe they was.

Q. Did you suggest to them, or either of them, the use of fat-liquor for that purpose?

(Objected to by defendants' counsel.)

A. I don't remember.

Q. Did they use any fat-liquor on those skins?

(Objected to by defendants' counsel.)

A. I don't know whether they did or not.

Q. Did you see the skins after they had treated them?

A. Yes, sir.

Q. Was the squeak taken out?

(Objected to by defendants' counsel.)

A. I don't know whether it was or not; don't remember.

Q. Have you stated on the cross-examination the names of all persons, that you remember, for whom your firm treated bark-tanned sheep and lamb skins with fat liquor before 1869?

A. Yes, sir.

Q. In what year was your firm formed?

A. In 1867, I believe.

Q. Then your firm did not, before 1869, treat any bark-tanned sheep or lamb skins with fat liquor for Daniel B. Judson, Solomon Jeffers, Albert Klein, Isaac V. Place & Co., or D. S. Farr & Son?

A. I don't remember.

Q. Do you mean that you do not remember that your firm treated any for either of the persons or firms just named, with fat liquor, previous to 1869?

A. Yes.

Q. Then, when you stated on your direct examination, in substance, that your firm had treated bark-tanned sheep and lamb skins with fat liquor, prior to 1869, for Daniel B. Judson, Solomon Jeffers, Albert Klein, Isaac V. Place & Co., and D. S. Farr & Son, you were mistaken, were you not?

I don't think I stated it so.

Q. If you did so state were you mistaken?

A. I was if I stated all of them.

Q. Name any persons or firms as to which, if you so stated, you were mistaken?

A. D. S. Farr & Son, Solomon Jeffers, Albert Klein, Isaac V. Place & Co.

Q. Then you now mean to testify, do you, that prior to 1869 your firm did not treat any bark-tanned sheep or lamb skins with fat liquor for Solomon Jeffers, Albert Klein, Isaac V. Place & Co., or D. S. Farr & Son?

296 A. I mean now to testify that we did not to my knowledge.

Q. Do you now mean to be understood as testifying that your firm did not so treat such skins for Daniel B. Judson previous to 1869?

A. I do not remember doing any for Daniel B. Judson prior to 1869.

Q. Who constitute the firm of Isaac B. Place & Co., referred to in your answer?

A. Isaac V. Place and a brother; don't know his name.

Q. Has your firm, since 1869, treated any bark-tanned sheep or lamb skins with fat liquor, for Isaac V. Place & Co.?

A. Yes, sir.

Q. Was there ever any fat liquor in the coal-house or wood-shed, referred to on your direct examination?

A. Yes, sir; there was.

Q. Was it generally kept there?

A. Most generally.

Q. Was there ever any used there, or about that building?

A. No, sir; not as I remember.

Q. Will you swear there was not?

A. No, sir.

Q. Was there a kettle kept in or about that building?

A. No, sir.

Q. Was there a tub kept in or about that building?

A. Yes, sir.

Q. Where located?

A. In the drive-way.

Q. That dry-way was made into a room enclosed, when the doors were shut, was it not?

A. Yes, sir.

Q. Was it in that room that the skins were prepared for shaving?

A. It was sometimes.

Q. Was fat liquor, either alone or with other materials, ever applied to the skins before shaving?

A. Not as I know of.

Q. Can you swear that it was not?

A. No, sir.

Q. Can you swear positively that neither Marvin J. Whiting nor Frederick S. Green ever assisted in applying fat liquor to bark-tanned sheep or lamb skins, in or about that building?

A. They never did with me.

(Question repeated.)

A. I would not swear whether they did or not, as I was not there all the time.

Redirect:

On his redirect examination by the defendants' counsel, the witness further testified, as follows:

Q. Did your firm treat bark-tanned sheep and lamb skins with fat liquor for Solomon Jeffers, Albert Klein, Daniel B. Judson, Isaac V. Place & Co., and Daniel S. Farr & Son in 1869, or since then?

(Objected to by plaintiff's counsel.)

A. Yes, sir; we did.

Q. Can you state positively whether or not you treated bark-tanned sheep or lamb skins for any of these persons or firms before 1869?

A. I cannot.

Q. What grade or class of bark-tanned sheep and lamb-skins did you sometimes treat with the preparation mentioned by you, composed of oil, soap, sal soda, and water?

A. Shaved bark-tanned sheep and lamb.

Q. What class or grade as to heft or thickness?

A. No. ones and No. twos, ordinary heft; some for lined and some for unlined gloves.

297 Q. What did the oil, soap, sal soda, and water, when prepared by you or your firm, for the treatment of bark-tanned sheep and lamb skins, make?

(Objected to by plaintiff's counsel.)

A. It made fat liquor.

Q. You spoke of treating some skins for George Nickloy. Do you remember the year?

A. In 1863.

Q. Was that before or after Monroe left?

A. I could not say.

On his further or recross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Have you since 1869 treated bark-tanned sheep and lamb skins with fat liquor for other persons or firms than those mentioned on your direct examination?

A. Yes, sir.

Q. Have you, for those mentioned and others, done a large business at this kind of treatment since 1869?

A. We done a middling business.

Q. About how many skins per year, on an average? State as nearly as you are able to estimate.

A. Probably twelve to 18 hundred dozen.

Q. Are you willing to swear that the average per year has not considerably exceeded that number?

A. No.

Q. Are shaved bark-tanned sheep and lamb skins spoken of on your redirect examination, thinner and more pliable than unshaved skins?

A. Yes, sir.

Q. Did you state on your cross-examination that the preparation composed of oil, soap, sal-soda, and water was called "gum?"

A. I believe not.

Q. Will you swear you did not so state in substance?

A. Yes, sir.

Q. Did you say anything about gum, in that connection, on your cross-examination?

A. Not as I remember.

Q. Will you swear you did not?

A. No, sir.

Q. Is not that preparation known and called "gum" among dressers of kid leather?

A. Yes; if not weakened down with water.

2d redirect examination:

Q. Are you able to state with any degree of accuracy or *net*iability

the number or about the number of bark-tanned sheep and lamb skins treated by your firm with fat liquor per year since 1869?

A. I cannot.

On his further cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Are you willing to swear that the number treated by you with fat liquor since 1869 would not reach as high as twenty hundred dozen per year?

(Objected to by defendants' counsel.)

A. No, sir.

298 Q. On your oath and conscience, don't you think the number has exceeded fifteen hundred dozen per year?

(Objected to by defendants' counsel.)

A. No, sir; taking it from 1869 to the present time.

Q. Has the number been increasing each year to the present time?

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. State the lowest number that you are willing to swear positively, the number treated by you during the last year did not exceed.

(Objected to by defendants' counsel.)

A. Twenty hundred dozen.

SAMUEL DODGE, JR.

Subscribed and sworn this 26th day of February, 1873, before me.

J. WENDELL,
Special Examiner.

JAMES F. PLACE, a witness produced, sworn, and examined on behalf of the defendant, testified as follows, to wit:

I will be 40 years old next June. Am a brother of Isaac V. Place. I reside in Gloversville. Have resided there about 22 years. My business is cutting gloves. I manufacture some once in a while a little. I am acquainted with a leather used in the manufacture of mittens and gloves, known as bark-tanned sheep and lamb skins. I have been engaged in the business of glove-cutting for 21 to 22 years. I am acquainted with an article used in treating mitten and glove leather, known as fat liquor. I am acquainted with Henry E. Krause, who was sworn as a witness in this cause. I was in the employ of my brother, Isaac V. Place, at his place of business in Gloversville, in the manufacture of mittens and gloves. Eleven years in all. I commenced for him on the first of April, 1849, or 1850, and worked for him then seven years in succession. I worked the first year at staking skins, after that at cutting. I worked for him after that two years in succession, but don't remember the date. I worked for him again in 1870 and 1871. Henry E. Krause was in the employ of my brother in 1855, 1856, and 1857. He worked principally as a cutter. I know there were some bark-tanned sheep and lamb skins prepared for mittens and gloves in 1856 and 1857. I helped cut them. They were prepared in Isaac V. Place's shop in Gloversville. I don't remember who prepared or treated them. For the best of my recollection, this lot so prepared in 1857 consisted of about 50 to 75 dozen of skins. Henry E. Krause was then in my brother's employ.

299 Q. What were the condition of these skins after being prepared ready to cut?

A. They were soft and pliable.

Q. How as to squeak?

A. The squeak was out of them.

Q. Are you able to state from handling these skins and cutting them, what had been used upon them in preparing them for mittens and gloves, after they were in the bark-tanned state, if anything?

A. I think I am.

Q. Please state what.

(Objected to by plaintiff's counsel.)

A. They were treated with fat liquor.

Q. State, if you know, whether or not at the time these skins were treated, there was fat liquor in the place of business of your brother, Isaac V. Place, where these skins were treated.

A. There was.

Q. State, if you know, where the liquor was, and in what vessel.

A. There was fat liquor in a small tub holding about three pails, and in a pail.

Q. If you saw these skins while being treated, or after treatment, and before being cut into mittens and gloves, state where you saw them.

(Objected to by plaintiff's counsel.)

A. I saw them in the shop.

Q. In what state were they then?

A. Before they were staked they were drawn up some; after they were staked they were soft and pliable.

Q. Had they at that time been treated with what you think was fat liquor?

A. They had.

Q. Did you see these skins in the bark-tanned state before treatment?

A. I did.

Q. State their condition then.

A. They looked as bark-tanned skins usually do, stiff, and looked sometimes as though they had been rolled.

Q. If you saw Henry E. Krause do anything to or with these skins, state what.

(Objected to by plaintiff's counsel.)

A. He helped me cut them.

Q. Is that all?

A. That is all I saw him do.

Q. During the other years that you worked for your brother, Isaac V. Place, from 1849 or 1850, for seven successive years, state whether or not he used in his business, for mittens and gloves, bark-tanned sheep and lamb skins, rendered soft and pliable, and having the squeak removed therefrom, by some process or treatment, and if so, during how many of said years.

(Objected to by plaintiff's counsel.)

A. I remember in 1855 and 1856 we cut some.

Q. How many?

A. I could not say.

Q. State as nearly as you can.

A. I presume in the two years, thirty or forty dozen skins.

Q. Are you able to state with what these had been treated? If so, state.

(Objected to by plaintiff's counsel.)

A. They had been treated with fat liquor.

Q. What was their condition after treatment?

300 A. They were soft, suitable for gloves.

Q. State whether or not, to your knowledge, Isaac V. Place used bark-tanned sheep and lamb skins, rendered soft and pliable, and

having the squeak removed from them, in his business for mittens and gloves, during the years that you worked for him after the year 1857.

(Objected to by plaintiff's counsel.)

A. He did, every year.

Q. State, if you are able to, with what such skins had been treated, to render them soft and pliable and remove the squeak.

(Objected to by plaintiff's counsel.)

A. I am satisfied in my own mind it was fat liquor.

Q. Did you help cut these?

A. I help cut very few of them.

Q. State whether or not you ever used fat liquor in the treatment of bark-tanned sheep or lamb skins; and, if so, when and where first.

(Objected to by plaintiff's counsel.

The plaintiff's counsel further objects to the question, and moves to strike out all the evidence of this witness heretofore given, so far as the same relates to witness's knowledge of the use of fat liquor in the treatment of bark-tanned sheep and lamb skins, as the name of witness is not contained in the answer of the defendants as a person having such knowledge, or a knowledge of the prior use of the plaintiff's alleged invention; and states that his attention has just been called to the omission of this witness's name from the answer.)

A. I used it in 1858, 1859, or 1860, at Gloversville.

(Whereupon plaintiff's counsel, reserving all objections and exceptions heretofore taken as to the competency of the witness to testify, and to each and every portion of his evidence and without intending to waive any such objections or exceptions, proceeded to cross-examine the witness, who further testified as follows:)

Q. Are you a brother of John W. Place, as well as Isaac V. Place?

A. I am so called.

Q. Is there any question about it?

A. Not any that I know of.

Q. Do you understand that a judgment has been obtained by this plaintiff against Isaac V. Place and John W. Place for a violation of this patent?

A. I have heard that there has been.

Q. Do you understand that there is now another suit pending against them for a further infringement of this patent?

A. I don't know that there is.

Q. I did not ask you if you knew, but if you understood, and I now ask you again if you do not understand that a suit is pending by this plaintiff against Isaac V. and John W. Place for an infringement of this patent?

A. I understand no such thing.

301 Q. Do you understand there is no suit or litigation pending between this plaintiff, Nathan C. Russell, and Isaac V. and John W. Place, or either of them?

A. I don't know as there is any.

Q. I did not ask you whether you knew, but what your understanding was. Will you now answer the last question on your understanding?

A. Well, I understand there is none, as far as I know anything about it.

Q. From whom or whence did you get such understanding?

(Objected to by defendants' counsel.)

A. I have not got such understanding from anybody. I have not heard that they have any.

Q. Do you mean to swear that you have never heard from anybody or any source that there is a suit or litigation or controversy between Mr. Russell and your brothers, Isaac V. and John W. Place, one or both of them, in relation to Mr. Russell's patent?

A. I don't think I ever heard any one say there was.

Q. Will you swear you never did?

A. I never did to my recollection.

Q. Have you heard or understood there was a controversy between Mr. Russell and anybody with regard to it?

A. I have.

Q. With whom?

A. With Mr. Klein, Mr. Dodge, and Isaac V. Place; had a suit that was tried at Utica. I heard of that.

Q. Have you heard that the suit with Isaac V. Place just spoken of was closed or settled?

A. I heard it was closed.

Q. Was you subpœnaed to come here as a witness?

A. No, sir.

Q. Who requested you to come?

A. Isaac V. Place.

Q. When were you first spoken to about coming here as a witness?

A. I don't remember when it was; several months ago.

Q. Has he spoken to you on the subject since?

A. Yes, sir.

Q. How many times?

A. I could not say.

Q. Say as accurately as you can.

A. Well, perhaps two or three times.

Q. Has he talked with you in regard to what you knew about this matter and your testimony?

A. He has.

Q. Has anybody else talked with you about this matter; and, if so, who?

A. Yes; I have—I cannot tell who; I have talked with several, and several have talked to me about it.

Q. Name all you can remember.

A. I talked with Even B. Evens, known as "Bony Evens," John H. Putman, and Stowe Brothers. That is all I remember.

Q. Have you heard that this plaintiff has made a claim against the John H. Putman just named by you for an infringement of this patent?

A. John H. Putman told me that Russell claimed damages.

Q. Are you now in the employ of this same John H. Putman?

A. I am.

Q. Do you reside in the village of Gloversville, and how long have you resided there, and how far from your brothers, Isaac V. and John W. Place respectively?

A. I do reside in Gloversville, and have resided there 20 or 21
302 years, about half or three-quarters of a mile from my brothers.

Q. Who do you understand the parties to this suit to be, in which you are now testifying?

A. I understand it to be Mr. Dodge and N. C. Russell.

Q. If you do not understand or have not heard that any suit or litigation is pending between Mr. Russell and your brother Isaac V. Place, did it not strike you as a little singular that Isaac V. Place should talk with you repeatedly about this matter and your evidence, and ask you to come as a witness in this suit?

A. I don't know as I thought anything about it, whether it was strange or not.

Q. Did it not occur to you at all that your brother was taking a good deal of interest in a matter wherein he was not a party?

A. I don't know as I thought anything about it.

Q. Do you or do you not understand that whether there is or is not a suit pending between Russell and Isaac V. Place, that the latter is interested and engaged in defeating or breaking down Russell's patent?

A. I don't understand that there is a suit pending between Russell Isaac V. Place.

Q. Do you understand that Isaac V. is trying to defeat or break down Russell's patent?

A. I understand he is.

Q. Since you have been in the business what has been your particular department or branch?

A. My particular business has been cutting, although I have manufactured some.

Q. How much of your time since you had been in business have you been engaged in manufacturing, and when?

A. In 1860 and 1861 I manufactured; in 1870 I made 70 dozen gloves. In 1872 I made 170 dozen. The whole time I manufactured covered, perhaps, two years and a half in all.

Q. Prior to 1860 did you manufacture?

A. In 1856 I made about 40 dozen of gloves overtime.

Q. What kind of skins were those 40 dozen manufactured by you in 1855?

A. I did not manufacture any skins in 1856?

A. From what kind of leather were those 40 dozen gloves manufactured by you in 1856 made by you?

A. Indian-tanned buckskin, or, more properly, fat-liquor dressed, called Indian-tanned.

Q. Did you prepare the leather for these?

A. I did not.

Q. Prior to 1860, had you manufactured any except this lot in 1856?

A. I had, a few dozen.

Q. When, where, and what kind were they?

A. I can't tell exactly the year; was done in Gloversville; were some sheep-skin and some buckskin.

Q. Tell the time, as near as you can.

A. I can't tell.

Q. Did this lot consist of a few dozen overwork done by you while you were cutting for Isaac V. Place, as before stated?

A. They did.

Q. Did you prepare the leather for these.

A. No, sir; I did not.

303 Q. Down to 1860, did you have any experience or practice in the manufacture of mittens and gloves, or the preparation of the leather therefor, other than you have now stated on your cross-examination?

A. I did.

Q. What?

A. I dampened the skins for cutting.

Q. With what and how?

A. I used soap-suds; also water; applied it with a sponge. I also applied fat liquor with a sponge.

Q. To what kind of skins did you apply the soap-suds?

A. I applied it to Indian-tanned and oil-dressed, and also to sheep-skins.

Q. Do you mean bark-tanned sheep-skins?

A. No, sir.

Q. What kind do you mean?

A. Oil-dressed sheep-skins.

Q. Won't you now state in detail and consecutive order all your experience in preparing leather for mittens and gloves, and manufacturing mittens and gloves, other than what you cut for I. V. Place prior to 1860?

A. In 1856 I made some gloves—about 40 dozen. I made a few dozen most every year before that, and I made some after that, before 1860. I can't say how many dozen.

Q. Is this all you can say in answer to the last question?

A. I don't hardly know how to answer it. I don't know as I understand his question.

Q. (Question again read to witness, and he answered—)

A. Well, that is all I choose to say.

Q. When, a few minutes since, you spoke of having applied fat liquor to skins, did you refer to a time prior to 1860?

A. I did.

Q. Why, then, did you not so state when asked a moment since to give all your experience before 1860?

A. Because the words "other than what you done for Isaac V. Place" was in there?

Q. Did you apply any fat liquor to skins for Isaac V. Place before 1860?

A. I did.

Q. When? State the time definitely.

A. It was on the first of April, 1849, or 1850.

Q. To what kind of skins did you apply it?

A. They were Indian-tanned.

Q. How many?

A. O, perhaps there were three or four hundred skins—as much as that.

Q. Was this your first experience in applying fat liquor to skins?

A. I was.

Q. Had you prior to 1860 seen bark-tanned sheep or lamb skins that had been prepared for gloves and mittens by the use of eggs or other ingredients besides fat liquor, to your knowledge?

A. I had not.

Q. Did you also apply soap suds to leather for cutting for I. V. Place prior to 1860?

A. I think I did.

Q. Have you any doubt about it?

A. No; I have no doubt.

Q. In 1860 and 1861 what experience had you in the manufacture of leather other than your work at cutting?

A. Well, I manufactured those two years, and I cut between 20 and 30 dozen of bark-tanned sheep to which I applied fat liquor; that is all.

Q. How did you apply the fat liquor to these?

A. I applied it with the sponge.

Q. Did you, after applying the fat liquor to these, put them in a box?

A. I did.

Q. How long did they lay in the box?

304 A. Might have laid there about 24 hours.

Q. And did they lay there about that time?

A. They did.

Q. Was this whole process of sponging the skins with fat liquor and then packing them down in a box, as you have described, what is known among manufacturers and dressers as dampening down?

A. It is.

Q. Was the fat liquor applied in its natural state as it came from the mill or was it weakened?

A. Just as it came from the mill.

Q. Did you apply it warm or cold?

A. I applied it cold.

Q. Is soap-suds or other liquor sometimes used for the same purpose?

A. I never saw it used on bark-tanned skins for the same purpose.

Q. Are you sufficiently acquainted with the preparation and dressing of leather for mittens and gloves to state whether soap-suds and other materials than fat liquor are or are not used for the purpose of dampening down skins as you have described?

A. I know they are.

Q. Since the year 1861 have you been engaged in cutting or in the manufacture or preparation of leather?

A. In cutting.

Q. You did not see the skins treated spoken of by you as treated by Henry E. Krause in 1856 and 1857, did you?

A. I did not.

Q. Then you do not know, of your own personal knowledge, that he treated them, do you?

A. I know he did treat them.

Q. Do you know otherwise than by hearsay?

A. I do.

Q. Did you treat them?

A. I did not.

Q. Did you see them treated?

A. I did not.

Q. Did you not state substantially on your direct examination that you did not remember who prepared or treated these skins?

A. I did.

Q. Was Krause engaged in cutting for your brother?

A. He was.

Q. Did you on your direct examination undertake to state how these skins were treated by handling them in cutting?

A. I think I did. I did.

Q. Do you wish to be understood as testifying that, from your experience in the preparation of leather in 1856 and 1857, you could determine by cutting leather into gloves just how it had been treated in its preparation—whether by fat liquor alone, fat liquor mixed with other ingredients, or other ingredients without fat liquor, or with the liquor, whatever kind, warm or cold?

A. I do not.

Q. Do you think you could now tell?

A. No, sir.

Q. Have you ever seen bark-tanned sheep and lamb skins that had been treated with eggs and oil in its preparation for mittens and gloves to your knowledge?

A. I have not.

Q. Can you swear, then, that in merely handling and cutting a pre-

pared skin you can determine certainly whether it was prepared with the application of the fat liquor or the eggs and oil?

A. I cannot.

Q. After the first seven years of service for your brother, Isaac V. Place, when did you again commence work for him?

305 A. I can't fix the date exactly, but was between 1857 and 1860. I think it was the year 1858 or 1859.

Q. When did that term of service expire?

A. In January, 1860.

Q. When, if ever, did you again resume work for him?

A. In December, 1870.

Q. How long did this term of service continue?

A. It ended in September, 1871.

Q. Have you worked for him since?

A. I have.

Q. When next, and how long?

A. In January and February, 1872, I worked 41 days; that is the last.

Q. During all these various periods of service for him, did he make gloves and mittens of bark-tanned sheep and lamb skins, in the bark-tanned state?

A. I don't hardly know how to answer that question; I don't know what he means by the bark-tanned state.

Q. Did he at any time during the time spoken of make any mittens and gloves from bark-tanned sheep and lamb skins, which had been subjected to no treatment as a preparation, except the ordinary staking?

A. He never did any, to my knowledge.

Q. Did he ever buy any mittens and gloves of that class at any time, during the period referred to, to your knowledge?

A. Not any to my knowledge.

Q. Did he have in his possession or sell any of that class during that time?

A. He did.

Q. Where did he get them, if you know?

A. He made them.

Q. I thought you testified a minute ago that he did not make any such gloves and mittens; am I mistaken?

A. I think you are.

Q. Do you now mean to testify that he did make that class of mittens and gloves during the time mentioned?

A. I do.

Q. To what extent, and when, so far as your knowledge goes?

A. In 1855, 1856, 1857, 1870, 1871, and 1872. I can't say to what extent; several hundred dozen of them.

Q. Do you know or remember whether he did or did not any of that class in 1858 to 1859?

A. I do not know.

Q. Can you mention any particular lot of bark-tanned sheep and lamb skins softened or prepared for gloves made up by Isaac V. Place prior to those mentioned by you as cut up for yourself and Krause in 1856 and 1857?

A. I think there was a lot cut in 1855.

Q. Will you swear there was?

A. Yes, there was.

Q. How many were in that lot?

A. I don't remember how many there was.

Q. Did you prepare these or see them prepared?

A. I did.
Q. Which?
A. I prepared them.
Q. What with?
A. With fat liquor.
Q. Brushed on?
A. Put it on with a sponge.
Q. Did you then dampen them down in a box, as before described?
A. Yes, I put them in a box,
Q. Was the liquor in the state in which it came from the mill when you applied it?
A. It was not.
Q. What, if anything, was done to it?
A. I added water to it.
Q. Is that all?
306 A. That is all; it is.
Q. Can you mention any other lot of prepared skins prior to those of 1856 or 1857, cut up by you and Krause?
A. I don't remember any others.
Q. Do you remember any lot after those mentioned as cut up by you and Krause in 1857 or 1857; if so, state the first lot you do remember.
A. I remember a lot in 1860 or 1861, perhaps in both years.
Q. How many was there in this lot?
A. 20 or 30 dozen.
Q. Did you treat them?
A. I did.
Q. Was this the lot before spoken of as done for yourself?
A. It was.
Q. Mention the next lot you can remember after this, and before 1869.
A. I cut about eighty or ninety dozen bark-tanned sheep skins for John H. Putman; I can't state positively the time, but think it was in 1863 or 1864.
Q. I was enquiring for skins cut up by you for Isaac V. Place while in his employ, and those only; please state the next lot of such skins after those of 1860 or 1861 manufactured for yourself?
A. The first lot was in 1869.
Q. About what time in 1869?
A. Was in December.
Q. Have you now stated on your cross-examination all the lots of such skins, you now remember, cut up by you for Isaac V. Place prior to 1869?
A. I think I have, all that I remember now.
Q. Were you subpœnaed or examined as a witness on the trial of a suit between this plaintiff and Isaac V. Place and John W. Place at Albany, in October, 1870, for an infringement of this patent?
A. I was not.
Q. Were you subpœnaed or examined as a witness on the trial of a suit between this plaintiff and Albert Klein at Utica, in March 1871, for an infringement of this patent?
A. I was not.

On his redirect examination by the defendants' counsel the witness further testified as follows:

Q. If you know that Henry E. Krause treated the bark-tanned sheep

and lamb skins that he and you help cut for Isaac V. Place in 1856 or 1857, please state how you know that he treated them.

(Objected to by plaintiff's counsel.)

A. I saw Krause take the skins from the barn, about 16 feet south from the house, and take them into the shop, and I saw him handle them after they were treated, and hang them on the lines back of the house and in front of the shop; that is all.

Q. State, if you know, where Krause took the skins from when he hung them on the lines and handled them.

(Objected to by plaintiff's counsel.)

307 A. He took them from the shop.

Q. The same shop he carried them into from the barn?

(Objected to by plaintiff's counsel.)

A. It was.

Q. State, if you know, the condition of the skins when taken by Krause from the barn to the shop, and their condition when taken from the shop to the line.

(Objected to by plaintiff's counsel.)

A. They were dry when taken from the barn, and wet when they were taken from the shop.

Q. State, if you are able, the length of time that elapsed between the time Krause carried these skins into the shop and the time he carried them out and put them on the lines.

(Objected to by plaintiff's counsel.)

A. About 5 or 6 hours.

Q. Was Isaac V. Place's shop at that time in the basement of his house?

(Objected to by plaintiff's counsel.)

A. I think not; it was not.

Q. State, if you know, whether or not at the time Krause took these skins from the barn to the shop, as stated by you, there was fat liquor in that shop; and, if so, where was it?

(Objected to by plaintiff's counsel.)

A. There was; was in a tub and a pail.

Q. Who, if any person besides Krause, was in this part of the shop where the skins were taken, and where the fat liquor was at that time the skins were there?

(Objected to by plaintiff's counsel.)

A. There was no one there that I know of.

Q. State whether or not, when Krause worked at cutting, he worked in the same room with you.

(Objected to by plaintiff's counsel.)

A. He did.

Q. During the time these skins were in the room where the fat liquor was, was Krause engaged in cutting?

(Objected to by plaintiff's counsel.)

A. He was not.

Q. When on your cross-examination you stated in substance that in the years 1855, 1856, 1857, 1870, 1871, and 1872, Isaac V. Place got out several hundred dozen mittens and gloves, to what class of mittens and gloves did you refer?

A. I referred to bark-tanned.

Q. In the bark-tanned state or after treatment?

A. After treatment.

Q. When you answered that question on your cross-examination, what kind of mittens and gloves did you understand the question to refer to?

(Objected to by plaintiff's counsel.)
A. To bark-tanned after treatment.
Adjourned to Feb. 28th, @ 9 a. m.

308 Recross-examination:

On his further cross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Can you swear positively to the year in which you say Krause treated the skins for I. V. Place?
A. I can.
Q. What year was it?
A. In 1857.
Q. Could you on your examination yesterday swear positively to the year?
A. I could.
Q. Why, then, did you not?
(Objected to by defendant's counsel.)
A. I think I did, as to that particular lot.
Q. Will you swear you did?
A. If I understand the question right, I did.
Q. Did you not testify yesterday that it was in 1856 or 1857?
A. I testified yesterday that there was the class of skins spoken of in the year 1856 or 1857, from about 50 to 75 dozen, cut up in his shop.
Q. In testifying yesterday to the lot of skins cut up by yourself and Krause, which you said Krause treated, did you not say it was in 1856 or 1857?
A. I did say so. I meant "and" 1857 instead of "or."
Q. Can you swear positively to the month in which that lot was treated?
A. I cannot.
Q. Can you swear positively to the season?
A. It was in the spring or summer months.
Q. Is that as definite as you can be as to the season?
A. It is.
Q. Can you swear positively whether the shop or place in which you say these skins were treated was in a building by itself or connected with a dwelling-house?
A. I cannot; but I think it was in a building by itself.
Q. Whether it was or not, are you able to state how many rooms there were devoted to business purposes?
A. I am not.
Q. Were there more employees in the business than yourself and Krause at the time spoken of?
A. There was.
Q. How many, and who, if you can state?
A. Can't remember the number exactly, how many there were. I remember Henry Vorhees as one. I do not remember the names of any other that particular year.
Q. Were there others; and, if so, how many, as nearly as you can now recollect?
A. There was, but don't remember how many; but should think in the shop and all were some five or six persons.
Q. Did you assist Krause in taking these skins from the barn to the shop?
A. I did not.
Q. Did anybody, to your knowledge; and, if so, who?

A. No one that I saw.

Q. Did you assist Krause in taking these skins from the shop to the lines?

A. I did not.

Q. Did anybody to your knowledge; and, if so, who?

A. No one that I saw.

Q. Can you swear whether there did or did not any one assist him in the handling and treatment of those skins from the time they were taken from the barn to the time they were brought into the shops for cutting?

A. Henry Vorhees staked them, I think.

309 Q. Is that all you can say in answer to the last question?

A. That is all the assistance I know; all to my knowledge.

Q. Where is Henry Vorhees, if you know?

A. I understand he is in Allegany County, in this State.

Q. Where were you, and what were you doing, from the time you say the skins were taken into the shop, until you say they were taken out and hung upon the lines?

A. I was in the shop a cutting.

Q. The same shop into which the skins were taken?

A. The same shop, but not the same room.

What time in the day were they taken into the shop?

A. I don't remember.

Q. What time in the day were they taken out?

A. They were taken out in the afternoon some time, but I don't remember the hour.

Q. If you don't remember what time in the day they were taken, nor the hour when they are taken out, how are you able to testify that they were in there five or six hours?

A. They were taken in in the morning about seven or eight o'clock, as nearly as I can remember, shortly after we commenced work. We commenced work in the morning at seven o'clock, and I think they were taken out, as near as I can remember, shortly after we commenced work in the afternoon. We commenced work at one o'clock.

Q. I understood you to testify just now that you did not know what time they were put in. Is your memory any clearer now on that point than it was when you made that answer?

A. It is not; I thought you meant the hour.

Q. What were you doing that day after the skins were hung out?

A. I think I was cutting. To the best of my knowledge now I was cutting all the afternoon.

Q. Who was cutting with you, if anybody?

A. I don't remember of anybody at present.

Q. Can you say whether there was or was not?

A. I cannot say positively.

Q. What was you doing the day before?

A. I don't remember.

Q. What was you doing the day after?

A. I think I was cutting; to the best of my knowledge I was cutting the day after.

Q. Can you swear positively you were cutting?

A. I cannot.

J. F. PLACE.

Subscribed and sworn this 28th day of February, 1873, before me.

J. WENDELL,
Special Examiner.

DANIEL B. JUDSON, a witness produced, sworn, and examined by and in behalf of the defendants, testified as follows, to wit:

I reside in Kingsboro, in the town of Johnstown, Fulton County,
310 and about one mile from the village of Gloversville. I am a manufacturer of mittens and gloves, and have been since 1850; twenty-three years; am now forty-four years of age since December 30th last. I manufactured more extensively, as I understand it, than any other person in the county. I know Samuel Dodge, sen., and Samuel Dodge, jr., the defendants in this cause, and have known them some eighteen or twenty years.

Q. Have they, as a firm, or either of them, treated bark-tanned sheep and lamb skins for you for the manufacture of mittens and gloves? And, if so, state the times when, the place where, and the quantities, as near as you are able.

A. They have treated such skins for me as a firm, and so has Mr. Samuel Dodge, sen., as an individual, one lot of about 231½ dozen, the latter part of 1856, and January, 1857; the next lot that I am positive of was in 1869, 38 dozen cape sheep-skins; these were treated from February to June of that year.

Q. Did they, or either of them, treat any other lot for you between 1857 and 1869?

A. Cannot state positively, as I go more from my books than memory, and find only the lots mentioned on my books.

Q. Where were these lots of skins mentioned by you treated?

(Objected to by plaintiff's counsel.)

A. I suppose at Gloversville.

Q. What was the state and condition of these two lots of skins mentioned by you before they were treated by Dodge?

A. The first lot was a lot of sheep and lamb skins, bark-tanned, dressed, some with the grain on, and some off, but not soft. I don't know what they would call it in law, but with the squeak in. The last lot were cape sheep, with grain on, bark-tanned in the rough.

Q. In the condition these two lots of skins were before treatment by Dodge, were they suitable for mittens and gloves?

A. They were not.

Q. Please state the condition of these two lots of skins, after treatment by Dodge, and the effect, if any, produced upon them by such treatment.

A. The first lot was softer, and the flesh side finished smoother. The last lot softer, soft and pliable, and the flesh side mooned.

Q. How as to the squeak?

A. To the best of my memory, I should say not so much squeak in the first lot after treatment, and none in the last.

Q. For what were these two lots of skins suitable, after treatment by Dodge?

A. The first lot were suitable for mittens and common gauntlets. The last lot were suitable for most any kind of gloves, button tops or gauntlets.

Q. Which of these two lots of skins was the roughest or coarsest skins?

A. The first lot.

Q. State whether or not you made these two lots of skins into mittens and gloves, and sold the mittens and gloves made from them
311 in the markets, or some of them, where mittens and gloves manufactured in Gloversville are usually sold.

(Objected to by plaintiff's counsel.)

A. I made most of them into gloves, and sold them in the same way

that I sold my other goods, which were the usual markets for selling them.

Q. Did you see either of these lots of skins treated by Dodge, or do you know how or with what he treated them?

(This question is objected to by plaintiff's counsel so far as it may call for hearsay, or anything but witness's personal knowledge.)

A. I did not see them treated, and do not know how or with what they were treated.

Q. State, if you know, how and by whom these skins were taken to Dodge for treatment, and how and by whom they were returned after treatment, and how long they were kept by Dodge?

A. I cannot state whether they were taken by myself or some one in my employment; and the same in regard to their return. The first lot, from four weeks to two months. The last lot I can't state.

On his cross-examination by plaintiff's counsel the witness further testified as follows:

Q. At the time the first lot of skins spoken of by you on your direct examination were treated, had you any partner in business; if so, who?

A. My impression is, from memory that Edward Ward had been, but was not then.

Q. Are you able to speak with any degree of positiveness as to whether he was or was not a partner at that time?

A. I am not able to state positively.

Q. He either was or had previously been a partner in business with you?

A. Yes, sir.

Q. Were the capo sheep treated for you in 1869 what are known in the trade as Bevington tan?

A. My impression is that they were.

Q. Are you able to state, either from your memorandum or memory, what price per dozen you paid Dodge for treating the cape sheep?

A. I think the price was twenty shilling' a dozen.

Q. Have or have not bark-tanned sheep and lamb skins in the bark-tanned state been manufactured into mittens and gloves in Gloversville and vicinity for a good many years past?

A. I would say they have, especially into mittens; what we call harvest mitts.

Q. Have defendants treated any bark-tanned sheep and lamb skins for you since 1869, for the purpose of preparing them for mittens and gloves; and, if so, how many?

A. They have. In the year 1870, I find them credited on my books with $497\frac{3}{12}$ dozens. In the year 1871, with $777\frac{4}{12}$ dozens. I have not settled for 1872, and cannot say how many since.

312 Q. Please state your judgment as to the number since 1871, as nearly as you can estimate.

A. It is only an estimate, but I should say from six to eight hundred dozen.

On his redirect examination by and in behalf of the defendants the witness further testified as follows:

Q. State, if you know, whether or not there was a period of time, extending from the year 1857 to the year 1869, when very few bark-tanned sheep or lamb skins made soft and pliable were manufactured into mittens or gloves in Gloversville and vicinity, and the reason, if any existed, why, during that period, but few such goods were made.

(Objected to by plaintiff's counsel.)

A. I should say, comparatively with the time since 1869, that there were but few. My impression is that one reason for a portion of the time was the low price of deer-skins as well as low price of fleshers used for oil-dressed. I think another reason has been an increased business, entire business, since 1869, in all business pertaining to mittens and gloves, compared with 1857 to 1869. I would say also there has been an improvement in the dressing of leather since 1868. I only give my own experience. I mean the treating of skins, as well as in the styles of gloves made.

On his recross-examination by plaintiff's counsel the witness further testified as follows, to wit:

Q. Did the price of deer-skins rise about the commencement of the war in 1860 or 1861?

A. My impression is they did not rise till the latter part of 1861 or 1862, and not at its height till 1864 or 1865.

Q. After reaching their highest point, did they subsequently decline?

A. They declined somewhat, but not as low as before the war.

Q. Is it or is it not true that all kinds of stock for the manufacture of mittens and gloves appreciated in price after the commencement of the war, and at about the same time that deer-skins rose, and that they have never gone back to the same prices where they stood before the war?

A. All stock advanced, but deer-skins more than sheep-skins stock, and neither have gone back to old prices.

Q. When you speak on your redirect examination of the improvement in the treatment and dressing of leather since 1869, did you refer to bark-tanned sheep and lamb skins?

A. I referred to those and the dressing of other skins also.

DANIEL B. JUDSON.

Taken, subscribed, and sworn this 28th day of February, 1872, before me.

J. WENDELL,
Special Examiner.

313 JOHN W. PLACE, a witness heretofore produced, sworn and examined by and in behalf of the defendants, being recalled and duly sworn, further testified as follows:

Q. Were you heretofore sworn and examined as a witness in this case?

A. I was.

Q. Are you acquainted with John Fulton, who has been sworn and examined as a witness in this case on the part of the plaintiff; and if so, how long have you been acquainted with him?

A. Yes, sir, for about four or five years.

Q. State whether or not you saw him at the skin-mill of Isaac V. Place, near Gloversville, in the winter of 1869 and 1870; and if so, state the time or times, if you remember, and who, if any one, beside yourself, was present while he was there.

(Objected to by plaintiff's counsel.)

A. I did see him there in 1869 and 1870; was the latter part of Dec., 1869, and the fore part of January, 1870. Henry Adams and Charles B. Wessels were present.

Q. State how long he remained there at each time, and the particular place where he was in this mill while there.

(Objected to by plaintiff's counsel.)

A. I should think he remained there from a quarter to half an hour each time. He stood by the stove at about the center of the mill.

Q. What, if any, business did he have there, or make known?

(Objected to by plaintiff's counsel.)

A. I don't remember of any business he manifested.

Q. Did he engage in conversation with any person or persons while there in that mill?

(Objected to by plaintiff's counsel.)

A. I don't remember that he did.

Q. What, if anything, were Charles B. Wessels and you engaged in doing in the mill where he, Fulton, was when there on these two several occasions mentioned by you?

(Objected to by plaintiff's counsel.)

A. I was at work fixing the liquor to put the skins in, and Wessels was helping me.

Q. What liquor and what skins, and please state in detail what you were both doing each time?

(Objected to by plaintiff's counsel.)

A. Fat liquor and bark-tanned sheep or lamb skins. I don't remember just what we were both doing each particular time. I remember where I stood when he was there. It was right by the side of the kettle where I was warming liquor.

Q. Do you remember whether or not you put any skins into the liquor or took any out it while Fulton was there on either of these occasions?

(Objected to by plaintiff's counsel.)

314 A. I don't remember whether I did or not. My impression is that I did.

Q. State, if you remember, what, if anything, Fulton gave his attention to while there on the occasions mentioned by you.

(Objected to by plaintiff's counsel.)

A. I don't know as he gave his attention to anything. He merely stood there. He did not say anything to me.

Q. Could he see what Wessels and you were doing?

(Objected to by plaintiff's counsel.)

A. He could.

On his cross-examination by plaintiff's counsel, the witness further testified as follows, to wit:

Q. Have you any means of fixing the date of the first occasion when you say Fulton was at your mill except from memory?

A. I don't know as I have particularly.

Q. Can you swear positively it was in Dec., 1869, from mere memory?

A. Yes, sir.

Q. Can you swear positively what part of December it was?

A. I would not swear to a day. Was the latter part of December, past the middle any way.

Can you swear positively it was past the middle of December?

A. Yes, sir.

Q. Have you any memorandum of it?

A. I think I have.

Q. Will you swear whether you have or not?

A. Not positive.

Q. If you have such a memorandum, where is it?

A. In some of my old memorandum-books.

Q. What one, and where is that memorandum-book?

A. I have a good many in my desk.

Q. Where is the one on which this memorandum is made?
A. I could not tell you, Mr. Smith.
Q. When did you last see it?
A. I don't remember of seeing it.
Q. Do you remember of ever seeing such a memorandum?
A. Not positive.
Q. Have you stated in substance on your cross-examination that you had no means of fixing the time or date except from mere memory?
A. I stated not as I knew of particularly.
Q. Independent of hearsay and this mythical memorandum-book of which you speak, is there anything, fact or circumstance, that enables you to fix the date of Fulton's first visit to your mill of which you speak?
A. Yes, sir; there is.
Q. How near to the exact date does that enable you come?
A. It enables me to come very near New Year's and very shortly after.
Q. Then you think it was the latter part of December and near to New Year's?
Q. Yes, sir.
Q. What time of the day was this first visit by Fulton?
A. In the forenoon.
Q. Are you positive of that?
A. Yes, sir.
Q. What time in the forenoon?
A. I couldn't give the exact time.
Q. How long could you swear positive to his staying?
A. I could not swear positive to his staying there any definite
315 length of time.
Q. Can you swear whether you had or had not any conversation with him?
A. I can swear he said nothing to me, nor I to him.
Q. Was he near you during the time he was there, and within ordinary speaking-distance?
A. He was.
Q. How near?
A. Within eight feet.
Q. Didn't you salute each other or pass the time of day?
A. No, sir.
Q. Are you quite sure you saw him?
A. Yes, sir.
Q. Had you ever met him before, and had you had any acquaintance with him previously?
A. No, sir; at least I had never spoken to him, never had an introduction to him previous to that.
Q. Did you readily recognize him when he came in as a neighboring manufacturer in the same place?
A. I did not.
Q. Then you did not know his name, where he lived, where he came from, or what his business was, did you?
A. Not while he was there.
Q. How did you know who it was?
A. I asked Wessels after he went out who it was.
Q. You had been some time in Gloversville at that time, manufacturing, had you?
A. Yes, I had.
Q. Then you mean to be understood as swearing, do you, that you did

not at that time know, or understand, that he was a resident of Gloversville and in some way connected in the manufacturing business?

A. I do.

Q. You mean to swear, then, that he stood there by the stove a quarter of an hour or so, do you?

A. Yes; I think more.

Q. And he never spoke a word to you, nor you to him, from the time he entered until the time he left?

A. No.

Q. Did he speak to Wessels or Wessels to him?

A. I don't remember whether he did or not.

Q. Can you swear that no one else but you, Wessels, and Adams, were about the mill at the time he was there?

A. I could not.

Q. Can you swear whether Adams and he talked together or not?

A. I cannot.

Q. What was the date of his second appearance?

A. Not long after New Year's.

Q. Can you swear positively to the month?

A. Yes, sir.

Q. What month was it?

A. January.

Q. Have you any memorandum of it?

A. Can't say positively.

Q. Have you any method of fixing the time except from memory?

A. Not positive, that I know of.

Q. Was he there the third time that winter?

A. I don't think he was; I have no recollection of his being there.

Q. Will you swear that the second occasion was not in the month of February?

A. Yes, sir.

Q. Did you speak with him on the second occasion?

A. I think we did have some conversation the second time.

Q. Can you swear positively whether you did or did not?

A. I cannot.

Q. Who else was present, the second time he was there, you can swear to positively?

A. Wessels, Adams, and Joseph Arhart.

Q. Did you mention Arhart on the direct examination as being present?

316 A. I think I did not.

Q. Why not?

A. I have no recollection of his being there the first time.

Q. When asked on your direct examination to state the persons present at your mill on the occasion of the second visit by Fulton, why did you not mention Arhart among others?

(Objected to by defendants' counsel.)

A. I don't know why I didn't.

Q. Can you swear that no one else was present except the persons named by you?

A. No, sir.

Q. Can you swear whether Fulton did or did not, on the second occasion, have conversation with any other person than yourself?

A. No, sir.

Q. Can you swear that one skin was dipped in the liquor, or the liquor

otherwise applied to it, on either occasion that Fulton was present, as you have described?

A. I don't remember.

Q. During the spring following the last visit of Fulton, were you and Isaac V. Place sued for an infringement of this plaintiff's patent for preparing leather for mittens and gloves?

A. We was sued, but don't remember whether it was the spring following; some time after that we were sued.

Q. Was that suit tried at Albany after that, before Judge Woodruff?

A. It was.

Q. Was Fulton a witness for the plaintiff on that trial?

A. I don't know of my own knowledge, but I understand he was.

Q. Do you understand he there testified to visiting your mill in the winter of 1869 and 1870?

A. I don't understand one way or the other whether he did or didn't.

Redirect examination:

On his further direct examination on the part of defendant, by his counsel, the witness further testified as follows, to wit:

Q. State whether or not Fulton was at this skin-mill after his visit there in January, 1870; and, if so, when.

(Objected to by plaintiff's counsel.)

A. He was; can't give the precise time; was late in the spring; am not positive.

Recross-examination:

On his further cross-examination by plaintiff's counsel the witness further testified as follows:

Q. Will you swear positively another visit by Fulton in the spring after January, 1870?

A. No, sir.

Q. Can you swear positively that he was there again after January, and before the trial spoken of on your cross-examination?

A. No, sir.

Q. At whose request did you come here to-day to testify?

A. Isaac V. Place's.

JOHN W. PLACE.

Taken, subscribed, and sworn this first day of March, 1873, before me.

J. WENDELL,
Special Examiner.

317 CHARLES B. WESSELS, a witness produced, sworn, and examined by and in behalf of the defendants, testified as follows:

I reside in Gloversville; have resided there nine years; am thirty years of age. My business has been working in the glove-shop of I. V. Place and I. V. & J. W. Place. I worked putting up work and putting it out; general work about the business. I know John Fulton, who has been sworn and examined as a witness on the part of the plaintiff. I saw him at Place's skin-mill in Dec., 1869, and also about two or three weeks after, in January, 1870. I saw him in that part of the mill where we were dipping leather and preparing skins, bark-tanned sheep and lamb skins—dipping them in fat liquor. I. W. Place, Henry Adams, and myself were present both times. The second time Joseph Arhart was also present. The first time we were dipping skins; the second time we were getting ready to dip. The first time Fulton was there John W. Place was dipping the skins, and I spread them out. The

second time Mr. Place was heating the liquor and I was getting some water to put into the liquor when he come. I am not positive that we commenced dipping skins before he went away, but think we did. He was there from twenty minutes to half an hour each time. He was standing by the side of the stove, in the same room we were at work. He had no business in particular that I know of. He did not state any. He could see what we were doing from where he stood. He had no conversation with me, and I don't know as he had with anybody else.

On his cross-examination by plaintiff's counsel the witness further testified as follows:

I mean to be understood that he did not speak to me, but he might have spoken to somebody else. I was attending to my work. I have no memorandum of either time he was there. I speak from memory. John W. Place and I have not recently talked over the time when this was. I have talked recently with Isaac V. Place in regard to the time. I do not remember whether Fulton was there at any other time. I only saw him twice. I am now in the employ of Isaac V. and John W. Place, and came here to-day at the request of Isaac V. Place. I had been in the employ of I. V. Place about five or six years previous to the winter of 1869 and 1870, in and about his manufacturing business at Gloversville.

Q. Prior to the fall or winter of 1869, had you known Place, or any one in his employ, to apply fat liquor to bark-tanned sheep or lamb skins?

A. Not that I recollect.

318 On his redirect examination by defendant's counsel the witness further testified as follows:

Q. While in the employ of Place did you spend much time in or about the mill?

A. No, sir.

Recross-examination:

On his further cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. In what branch or department of Place's business were you engaged prior to the winter of 1869? State fully and particularly.

A. Laying off gloves and carrying skins to and from the mill. I did not work at the same thing every year.

Q. Did you during that six years have free access to, and see more or less, all parts of his business premises?

A. About all.

Q. If there was any part you did not have access to, state which.

A. None in particular.

Q. Has Mr. Place, since the winter of 1869, been *been* engaged, more or less, in the preparation of bark-tanned sheep and lamb skins for mittens and gloves by the application of fat liquor?

A. Yes, sir.

Q. If he had made or used such leather in his business to any considerable extent during the six years you were with him prior to 1869, were you in a situation to have known it?

(Objected to by defendants' counsel.)

A. Yes, sir.

On his further redirect examination by defendants' counsel, the witness further testified as follows:

Q. Did Mr. Place, to your knowledge, make and use such leather for mittens and gloves in his business before 1869; and, if so, for how many years?

A. I don't recollect whether he did or not.

Q. How far was the place where you worked chiefly while in the employ of Place, prior to 1869, from the mill or place where he had such skins as he manufactured dressed?

A. About one mile.

Q. Prior to 1869 did you work any in the mill?

A. No, sir.

Q. State whether or not, prior to 1869, you conveyed to and from the mill all the skins Place had dressed?

A. No, sir.

Q. What portion of the skins Place had dressed while you were in his employ, prior to 1869, do you think you took to and from the mill?

A. I couldn't say.

Q. Did other persons in his employ during that time convey skins to and from the mill?

A. Yes, sir.

Q. State whether or not, during the time you worked for Place, prior to 1869, there were years when you laid off gloves by the dozen, and did not take any skins to or from the mill?

A. Yes, sir.

Q. During the years that you worked for Place, prior to 1869, did other persons in his employ lay off mittens and gloves for him?

319 A. Yes, sir.

Q. For how long a time has Place had his gloves, or a portion of them, laid off by steam away from his place of business, if he has done so at all?

A. About five years.

On his further cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. How many, and which, are the years you did not carry skins to or from the mill?

A. I can't state how many. In 1865 I did not.

Q. Is there any other year than 1865 you can designate and swear positively that you did not carry skins to and from the mill?

A. No, sir.

Q. Did you, or did you not, visit the mill during 1865, more or less?

A. I might have been down there; I don't recollect.

Q. When did Place commence having gloves laid off by steam at a place other than his own shop, where you laid off gloves, and where was that place?

A. Was five or six years ago, and the place was East Fulton street, at Gloversville.

Q. Can you state how many years you had been in Place's employ before he commenced having gloves laid off in East Fulton street?

A. Three or four years; three years; about three years.

Q. During that three years, more or less, were the skins dressed at his mill subsequently brought to the shop where you worked to be cut up?

A. Yes, sir.

Q. Since that time, have the skins dressed at his mill been brought to the cutting-shop before spoken of to be cut into mittens and gloves before the gloves were taken to the steam-shop to be laid off?

A. Yes, sir.

Q. After the gloves were laid off by steam at the place before mentioned, were they brought back to the cutting-shop before spoken of, and there assorted and put up for sale?

A. Yes, sir.

C. B. WESSELS.

Subscribed and sworn this first day of March, 1873, before me.

J. WENDELL,
Special Examiner.

Exhibits marked one to six, inclusive, J. W., examiner, heretofore produced, are now formally offered in evidence by and in behalf of the defendants.

Defendants, by their counsel, also now offer in evidence true copies of the original letters-patent and specifications, bearing date August 17, 1869, No. 93910, authenticated by the certificate of the Commissioner of Patents, dated Sept. 7th, 1872, and marked "Exhibit 7, J. W., examiner."

320 Also now offer in evidence true copies of the petition and oath of N. C. Russell, the plaintiff in this suit, and the specifications and file-wrapper for the surrender of the original letters-patent, and for a re-issue of said letters-patent, also authenticated by the certificate of the said Commissioner of Patents, dated Sept. 7, 1872, marked "Exhibit 8, J. W., examiner," to be used in evidence on the trial and argument of this case.

Exhibit No. 7.

THE UNITED STATES PATENT-OFFICE.

J. M. Dudley, Johnstown, Fulton Co., N. Y.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this Office of the letters-patent granted N. C. Russell, dated August 17th, 1869, No. 93910, for "improved process of treating leather so as to render it suitable for the manufacture of gloves."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this seventh day of September, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[L. S.]

M. D. LEGGETT,
Commissioner.

No. 93910.

THE UNITED STATES OF AMERICA.

To all to whom these letters-patent shall come:

Whereas N. C. Russell, of Gloversville, N. Y., has alleged that he has invented a new and useful improved process of treating leather so as to render it suitable for manufacture of gloves, &c., and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said invention; and that the same hath not to his knowledge and belief been previously known or used; has paid into the Treasury of the United States

321 the sum of thirty-five dollars, and presented a petition to the

Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said N. C. Russell, his executors, administrators, or assigns, for the term of seventeen years from the seventeenth day of August, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, a description whereof is given in the annexed schedule, and made a part of these presents.

[L. S.] In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

COUNTERSIGNED AND SEALED WITH THE SEAL OF THE PATENT-OFFICE.

W. T. OTTO,
Acting Secretary of the Interior.
S. H. HODGES,
Acting Commissioner of Patents.

UNITED STATES PATENT-OFFICE.

Nathan C. Russell, of Gloversville, New York, letters patent No. 93910, dated August 17, 1869. Improved process of treating leather so as to render it suitable for the manufacture of gloves, &c.

The schedule referred to in these leters-patent and making part of the same.

To all whom it may concern:

Be it known that I, Nathan C. Russell, of Gloversville, in the county of Fulton and State of New York, have invented a new and useful improvement in the preparation of leather; and I do hereby declare that the following is a full, clear, and exact description of the same:

My invention consists in a novel treatment of what is known as "bark-tanned lamb or sheep skin," an article used by book-binders, and which, while sufficiently soft and supple for the purposes of their trade, is too harsh and stiff for glove-making and a variety of other purposes.

322 This objection is removed by my treatment of the article, and the latter rendered so soft and free, yet full, in respect of body, as to adapt it, among other purposes or uses, to the making of what are termed "dog-skin" gloves.

The process I adopt, and which constitutes my invention, is as follows:

I take of "fat liquor," obtained in scouring deer-skin after tanning in oil, say ten gallons, (10 gals.,) and warm the same by heating it to or near the boiling-point. I then add to such heated fat liquor eight ounces (8 oz.) of sal soda, twelve ounces (12 oz.) of common salt, one pint (1 pt.) of soft soap, and four ounces (4 oz.) of Venetian red, and stir and mix these several ingredients with the fat liquor.

This forms the treating mixture or compound, and, when made in the foregoing quantity, will suffice for five or six dozen skins; but of course such quantity may be more or less varied, as may also the proportions of the ingredients, and the Venetian red, or other coloring-matter, be modified or omittted, as desired.

To effect the treatment hereinbefore referred to of the bark-tanned or bark-tanned shaved lamb or sheep skin, I lay said skin on a table or other suitable surface, and rub the above-described compound

on to both sides of it, using for the purpose a horse or other suitable brush or rubber, by which it can be worked into the skin, that is afterward hung out to dry, and subsequently "staked," when the character of the skin will be found entirely changed from harshness to softness and in other respects, thereby adapting it to the manufacture of gloves of the description previously named and to a variety of other purposes for which said skin was not suitable prior to the treatment of it I have herein described.

Claim.

What is here claimed, and desired to be secured by letters-patent, is:

The process, substantially as herein described, of treating bark-tanned lamb or sheep skin, by means of a compound composed and applied essentially as specified.

N. C. RUSSELL.

Witnesses:
FRED. HAYNES,
M. J. SHANLYS.

323 *Exhibit No. 8.*

THE UNITED STATES PATENT-OFFICE.

J. M. Dudley.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of the re-issued letters-patent granted N. C. Russell, dated February 1st, 1870, No. 3816, for "improvement in the treatment of leather."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this seventh day of September, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[L. S.] M. D. LEGGETT,
Commissioner.

Petition.

To the Commissioner of Patents:

Your petitioner prays that he may be allowed to surrender the letters-patent for a certain new and useful improvement in the process of treating leather so as to render it suitable for the manufacture of gloves, &c., granted to him August 17th, 1869, (No. 93910,) whereof he is now sole owner, and that letters-patent may be re-issued to him for the same invention upon the annexed amended specification; and he hereby appoints Henry T. Brown and John W. Coombs, of the firm of Brown, Coombs & Co., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, and to transact all business in the Patent-Office connected herewith.

N. C. RUSSELL.

[50. Jan. 12, 1870.—N. C. R. 50.]

Oath.

STATE OF NEW YORK,
County of New York, ss:

Nathan C. Russell, the above-named petitioner, being duly sworn, deposes and says that he verily believes that, by reason of an insufficient and defective specification, his aforesaid letters-patent are inoperative and invalid; that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief; that he is the sole owner of said
324 letters-patent; and that he verily believes himself to be the first and original inventor of the improvement set forth in this amended specification.

N. C. RUSSELL.

Sworn to and subscribed before me this 12th day of January, 1870.

WM. H. BROWN,
Commissioner of Deeds.

Re-issue.

To all whom it may concern:

Be it known that I, Nathan C. Russell, of Gloversville, in the county of Fulton, and State of New York, have invented a new and useful improvement in the preparation of leather, and I do hereby declare that the following is a full, clear, and exact description of the same:

My invention consists in a novel treatment of what is known as "bark-tanned lamb or sheep skin," an article used by book-binders, and which, while sufficiently soft and sup'le for the purpose of their trade, is too harsh and stiff for glove-making and a variety of other purposes. This objection is removed by my treatment of the article, and the latter rendered so soft and free, yet full in respect of body, as to adapt it, among other purposes or uses, to the making of what are termed "dog-skin gloves."

The princip*le* feature of the invention consists in the employment of what is known amongst tanners and others as "fat liquor," which is ordinarily obtained by scouring deer-skin after tanning in oil, but which when it is not convenient to obtain in this manner may be produced, or a liquor having the same character obtained, by the cutting of oil with a suitable alkali.

In treating leather with the "fat liquor" it is desirable to heat the latter to or near the boiling-point, and it is preferred to use the same in connection with other ingredients. Thus, for instance, there may be added to each ten gallons (10 gal.) of such heated fat liquor eight ounces (8 oz.) of sal-soda, twelve ounces (12 oz.) of common salt, one pint (1 pt.) of soft soap, or an equivalent quantity of hard soap, and four ounces (4 oz.) of Venetian red; such ingredients to be well stirred and mixed with the fat liquor. This forms a good treating mixture or compound, and when made in the foregoing quantity will suffice for five or six dozen skins, but of course such quantity may be more or less varied, as may also the proportions of the ingredients, and the Venetian red or other coloring matter be modified or omitted as desired.

To effect the treatment hereinbefore referred to of the bark-
325 tanned lamb or sheep skin, the same should be well dipped in or saturated with the fat liquor, or compound of which fat liquor is the base. This may be done by laying the skin to be treated on a table

or other suitable surface and rubbing the fat liquor or compound on or into both sides of the skins, using for the purpose a horse or other suitable brush or rubber, by which it can be worked into the skin, that is afterwards hung out to dry and subsequently "staked," when the character of said skin will be found entirely changed from harshness to softness, and in other respects, thereby adapting it to the manufacture of gloves of the description previously named, and to a variety of other purposes for which said skin was not suitable prior to the treatment of it I have herein described.

What is here claimed and desired to be secured by letters-patent is:

1. The employment of fat liquor in the treatment of leather, substantially as specified.

2. The process, substantially as herein described, of treating bark-tanned lamb or sheep skin by means of a compound composed and applied essentially as specified.

N. C. RUSSELL.

Witnesses:
FRED. HAYNES.
FRED. TUSCH.

Re-issue No. 3816. 1870. 12,163.

N. C. Russell, of Gloversville, county of Fulton, State of New York.

Process of treating leather so as to render it suitable for the manufacture of gloves, &c.

Rec'd, Jan'y 17, 1870.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, none required.
Old pat. No. 93910, dated Aug. 17, 1869.
1. Cert. dep. $30, Jan'y 17, 1870.
Cash.
Add'l fee cert.
" " cash.
Examined Jan. 20, 1870, B. S. Hedrick.
2. Issue Grinnell, Jan. 21, 1870.
3. Patented Aug. 17, 1869.
Re-issued Feb. 1, 1870.
Recorded vol. , page.
Circular.
Brown, Coombs & Co., present.

Whereupon defendant rested.

326 *Plaintiff's rebutting evidence.*

JOHN FULTON a witness recalled, produced, and resworn and examined on the part of the plaintiff, further testified as follows, to wit:

Q. In your treatment of bark-tanned sheep and lamb skins by the Russell process, about how long do you keep the skin in the liquor, when immersed?

(Objected to by defendants' counsel.)

A. Long enough to have them thoroughly saturated, which takes from five to fifteen minutes.

Q. Please state whether there is any difference in your mode of treatment in this respect from 1868; and, if so, what.

(Objected to by defendants' counsel.)

A. There is, because we did not immerse them altogether in 1868. We had no established mode in that year. It did not take any longer to immerse them in 1868 than it did in 1869, or any other year. We were experimenting in 1868.

(The defendants' counsel objects to and asks to strike out the last sentence of the last preceding answer of the witness.)

Q. In your experiments in 1868, from how long to how long did you subject the skins to the liquor?

(Objected to by defendants' counsel.)

A. From five minutes to a half an hour; I am not certain whether it was in 1868 that we left them in longer.

Q. Please state whether or not, in 1868 or prior to that, you left them in longer than that, and if so how long.

(Objected to by defendants' counsel.)

A. I don't remember the time, whether it was in 1868 or not, but we have left them in longer. I think it was in 1868. From five minutes to two hours, and one occasion all night.

Q. Please state, if you are able to do so from your knowledge and experience, what the effect upon a skin would be to immerse it in warm fat liquor and allow it to remain therein over night.

(Objected to by defendants' counsel.)

A. It would spoil the skin, make it cloudy and black, and not fit for gloves.

Q. Please state, if you are able from your knowledge and experience, what the effect on the skin would be to immerse it in fat liquor so hot that the operator could not work with his hands in it, and allow it to remain therein for 30 minutes.

(Objected to by defendants' counsel.)

327 A. It would shrivel the skin up and make it crispy, and a very dark color, and ruin it.

Q. Please state whether, in the treatment of skins by the Russell process you subject the skin more than once to fat liquor.

(Objected to by defendants' counsel.)

A. Only once.

Q. Please state whether the effect of the treatment by Russell's process is or is not the same upon sheep as upon lamb skins.

(Objected to by defendants' counsel.)

A. It is the same.

Q. Please state whether or not the skin squeaks while in a wet state.

A. It does not.

Q. Please state whether or not, by an examination of the skin in a wet state, it can be determined what the condition of the skin will be, as to softness and squeak, when dry.

(Objected to by defendants' counsel.)

A. It cannot be.

Q. Please state whether or not bark-tanned sheep-skins treated according to plaintiff's process will make leather suitable for what are called dog-skin gloves.

(Objected to by defendants' counsel.)

A. Yes, sir; they will.

Q. Please state into what kind of goods you make the coarsest and poorest of the leather which you have subjected to the Russell process.

(Objected to by defendants' counsel.)

A. Into men's gauntlets.

Q. Please state to what class or quality of goods men's mittens, with gauntlet wrists, and boys' mittens belong.

(Objected to by defendants' counsel.)

A. If from bark-tanned, the poorest, cheapest.

Q. State, if you are able, at what time the plaintiff moved from Fulton street to Bleecker street, where he now resides.

A. In the spring of 1866, either the last days of March or the very first of April.

Q. Do you recollect a lot of skins that Russell treated for G. W. Jeffers & Co., of which firm Nathaniel Bentley was a member?

A. I do.

Q. State if there was more than one lot treated for them.

A. Only one.

Q. With whom did Bentley make the arrangement for treating those skins?

A. He made it with me.

Q. Please state whether you said to Nathaniel Bentley, or Henry Bentley, his brother, in words or substance, when he came to your shop while the skins or a portion of them were there, that the skins were there, and if he did not like them he better take them to Dodge and get them fix'd, because you could not make them any better.

A. No, sir.

Q. What kind of a lot of skins were there, as to quality?

A. They were very poor; and as a lot, were the poorest I ever saw.

328 Q. Please state whether the price at which you stipulated to do them was the same or more than the price for doing ordinary skins.

(Objected to by defendants' counsel.)

A. At the price for doing ordinary skins.

Q. And when you made the bargain to do them had you seen the skins?

A. No, sir; I had not.

Q. What was the date of the first letters-patent for this invention, and how did you give the date on your previous examination, if you remember?

(Objected to by defendants' counsel.)

A. August 17, 1869. I gave it, the date, the same on my previous examination.

Q. Were you present at the trial of Russell against Klein at Utica in March, 1871, for an infringement of this patent?

A. I was.

Q. Did you there see, and do you remember the specimens of leather produced by the plaintiff on that trial, as bark-tanned sheep and lamb skins, treated according to plaintiff's process and shown to John W. Place and others while giving their testimony?

A. I did see them there, and remember them, and saw them shown to the parties mentioned.

Q. Please state whether those specimens had, or had not, been treated according to Russell's patent.

(Objected to by defendants' counsel.)

A. They were.

Q. How will the value and quality of the leather made from bark-tanned sheep and lamb skins, treated by the Russell process, compare with other leather of the same cost used for mittens and gloves, in Gloversville and vicinity?

(Objected to by defendants' counsel.)

A. The goods made of bark-tanned, treated in this way, will bring more money, and a larger profit can be obtained than from goods made from any other leather used for the manufacture of mittens and gloves.

(The defendants' counsel objects to the last preceeding answer of the witness, and asks that it be stricken out.)

Q. State whether leather made by the Russell process is of greater or less value for gloves than other leather of the same cost used at Gloversville and vicinity.

(Objected to by defendants' counsel.)

A. Is of greater value.

Q. Please state whether the difference is large or small.

(Objected to by defendants' counsel.)

A. It is large.

Q. Did you at any time, in the winter of 1869 and 1870, visit Isaac V. Place's skin-mill in Gloversville? and if so, state the time or times, if you know.

(Objected to by defendants' counsel.)

329 A. I did; on the 31st day of December, 1869, I was there, and on the 14th day of February, 1870.

Q. State whether you know positively the dates when you were there.

(Objected to by defendants' counsel.)

A. I do.

Q. If you had any business there, state what it was.

(Objected to by defendants' counsel.)

A. I went there to see if they were infringing on Mr. Russell's patent.

Q. State whether plaintiff made any change in his process or mode of treatment of bark-tanned sheep and lamb skins after his first application for a patent in 1869, and before the re-issue in 1870.

(Objected to by defendants' counsel.)

A. No, sir; he did not.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. On how many different occasions, if more than one, before to-day, have you been examined as a witness in this case?

A. Only one.

Q. About how long ago was that?

A. I believe it was in September last.

Q. On how many different days have you been present here during the taking of testimony in this case on the part of the defendant since you were examined as a witness in September last? State as near as you can.

A. A portion of three days, if my memory serves me right.

Q. Since the adjournment, about eight days ago, how much time, if any, have you spent in consultation with the plaintiff or his counsel in regard to this case?

A. I should say not to exceed two or three minutes.

Q. When and where was that?

A. It was last Tuesday, in the office of N. C. Russell & Co., at Gloversville.

Q. Who was present?

A. I think Geo. Gillett was there part of the time, that is, all the time I speak of.

Q. How long or what part of the time was Gillett there?

A. I don't remember.

Q. State as near as you can.

A. Might have been half a minute or a minute when I went out of the room.

Q. No one but Gillett and you there?

A. Mr. Smith, plaintiff's counsel in this case; that is all; no one else.

Q. During the time testimony has been taken in this case, have you from time to time read the testimony taken, or any part of it?

A. None but my own.

Q. Have you from time to time during the taking of the testimony in this case been informed of the substance of what the several witnesses, or any of them, testified to; and, if so, by whom?

A. I have heard it talked of. I have heard Mr. Russell speak of it, and have heard H. E. Smith speak of it, and have heard a number of others make remarks about it.

330 Q. Have you been active in assisting Mr. Russell in this case?

A. No, sir; only on one occasion.

Q. On what occasion was that?

(Objected to by plaintiff's counsel.)

A. On last Saturday.

Q. What did you do by way of assisting Mr. Russell in this case last Saturday?

A. I don't know as it was assisting him any in this case. I made a little experiment for the plaintiff on Mr. Dodge's gum—what he testified as being fat liquor.

Q. Where did you get the gum?

(Objected to by plaintiff's counsel.)

A. We made it after the directions given in Dodge's evidence in this case.

Q. Were you subpœnaed as a witness in this case to come here to-day; or paid any fees as a witness?

A. My traveling-expenses were paid by Mr. Russell—coming here and back—amounting to fifty cents.

Q. How did you come here to-day?

A. Came on the cars.

Q. What is the fare on the cars?

A. Twenty-five cents, I believe.

Q. Did Russell buy your ticket or pay your fare?

A. He gave me two tickets—a ticket here and one to return.

Q. Is that what you mean by Russell's paying your fare here?

A. Yes, sir.

Q. Were you subpœnaed as a witness in this case or paid fees as a witness for attending as such in September last, when your testimony was taken?

A. I think not.

Q. Have you subpœnaed any witnesses in this case on the part of the plaintiff or requested any to attend?

A. I did in September last; three or four.

Q. Did you pay them fees?

A. Yes, sir.

Q. Who did you subpœna and pay?

A. Marvin Whiting, Mr. Putnam, Mr. Green, Lewis P. Johnson, and James Christie.

Q. Where did you get the money?

A. Of Mr. Russell.

Q. Did Mr. Russell hand you the money, or did your firm furnish it and charge it to Mr. Russell?

A. Mr. Russell gave it to me.

Q. Did you subpœna witnesses on the part of the plaintiff in the suit of Russell against Klein, tried at Utica in March, 1871?

(Objected to by plaintiff's counsel.)

A. I believe I did. I am not positive.

Q. In the treatment of bark-tanned sheep and lamb skins used by Russell and you since 1868, who has generally prepared the liquor and treated the skins?

A. I have.

Q. Do you remember what you said to Bentley in regard to the skins of G. W. Jeffers & Co. left with Russell, or Russell and you, for treatment?

A. I do, partially.

Q. State what you said to him, as far as you remember, about the time they were taken away.

A. I told him I thought they were pretty good leather, but inasmuch as he was dissatisfied and we was getting the worst of the job, if they did not suit we would not fix any more; he might take them away.

331 That is the sum and substance of it. This was said to Henry Bentley, the man they sent for the skins.

Q. Will you swear that was all you said to Henry Bentley at that time?

A. Yes, sir.

Q. Who did you see at the skin-mill of Isaac V. Place, at the time you were there in December, 1869?

A. I saw John W. Place, Charles Wessels, William Gulick, I believe, and Henry Adams, and a young man named Rinehart, I think. These were around and about the mill; some of them outside.

Q. What was John W. Place and Charles Wessels engaged doing at the time you were at the mill in December, 1869?

A. John W. was taking skins out of a callender kettle of fat liquor heated—were bark-tanned sheep and lamb skins—and Charles Wessels was spreading the same skins on a wheelbarrow or something else, smoothing them out. That is all they were doing while I was there.

Q. Did you taste or feel of the fat liquor they were using?

A. I did both.

Q. In what way did you feel of it?

A. I put my hand in it, naked hand.

Q. How warm was it?

A. As warm as I could comfortably bear it.

Q. What were they doing at that mill at the time you were there in February, 1870?

A. Isaac V. Place had a kettle filled with fat liquor heated, and was fixing bark-tanned sheep and lamb skins. I saw them put the skins in the fat liquor, saturate them, and saw them take them out, and put them on a box, wheelbarrow.

Q. What were they doing when you first got there on this occasion?

A. Isaac V. Place was saturating skins in fat liquor, as I have stated.

Q. Did they put any skins into the liquor after you got there?

(Objected to by plaintiff's counsel.)

A. I will not say that he did, although I think he did.

Q. How long were you there at this time?

A. Perhaps fifteen minutes; couldn't say to a minute.

Q. Did you feel of the fat liquor they were using at this time?

(Objected to by plaintiff's counsel.)

A. I think I did.

Q. Can you swear positively whether you did or did not?

(Objected to by plaintiff's counsel.)
A. I think I can.
Q. Can you?
(Objected to by plaintiff's counsel.)
A. Yes, sir; I can.
Q. Did you feel of the liquor?
(Objected to by plaintiff's counsel.)
A. If my memory serves me right, I believe I did.
Q. How warm was it?
(Objected to by plaintiff's counsel.)
A. So you could bear your hand in it comfortably.
Q. Was any person working in it with the naked hands?
(Objected to by plaintiff's counsel.)
332 A. Yes, sir.
Q. Before going to the mill of Isaac V. Place, in December, 1869, had you seen any bark-tanned sheep or lamb skins, at or about that mill, or in possession of Isaac V. Place, that had been treated with fat liquor as you supposed?
(Objected to by plaintiff's counsel.)
A. Not that I know of.
Q. Had you heard, or did you understand before going there in December, 1869, that Isaac V. Place was treating bark-tanned sheep or lamb skins with fat liquor at that mill?
(Objected to by plaintiff's counsel.)
A. I had heard so, that he was treating them with fat liquor, but did not know where he treated them, but inasmuch as they come from that way, I suppose they were treated there.
Q. Where you at this mill on more than two occasions in the year 1869, 1870?
A. I was not there on two occasions in 1869, but was in 1870.
Q. How many times were you there *on* 1869?
A. Once.
Q. How many times in 1870?
A. I can't remember exactly, but I was there a number of times, but not in the mill a number of times; was probably there two or three times.
Q. How many times were you in the mill where they were treating bark-tanned sheep and lamb skins in 1870?
A. Only once when they were treating.
Q. How are you enabled to fix the time when you were there in December, 1759, and February, 1870?
A. I made a memorandum of it.
Q. When?
A. At the time.
Q. On what?
A. On a memorandum-book.
Q. Have you the book with you?
A. I have.
Q. Is the memorandum-book in which you noted the time that you visited Place's mill a book or diary kept by you in the years 1869 and 1870, in which you noted business transactions or engagements, and does that book give or indicate the month or days of the month?
A. It is not what we call a diary, but a book in which I noted some business transactions. It does not give or indicate the months or days of the month.
Q. If there are any blank leaves, on which there is no writing or

memoranda, in that book, immediately preceding the leaf on which you noted the times of your visits to Place's mill, state how many there are.

(Objected to by plaintiff's counsel.)

A. I don't know.

Q. What is it that you do not know?

A. A great many things that I do not know.

Q. What do you mean to be understood by your answer "I don't know," made to the question before the last one answered by you?

(Objected to by plaintiff's counsel.)

333 A. I meant that I meant I didn't know.

Q. Meant that you didn't know what?

(Objected to by plaintiff's counsel.)

A. I did not know how many leaves there are in the book not written on.

Q. Have you that book here now?

(Objected to by plaintiff's counsel.)

A. I have.

Q. Please examine it, and tell me how many, if any, blank leaves there are in it immediately preceding the leaf on which you noted the times you visited Place's mill, on which there is no writing or memorandum.

(Objected to by plaintiff's counsel.)

A. There isn't any immediately preceding.

Q. Will you let me take the said book for the purpose of inspecting it, with a view of further examining you, in regard to the memoranda therein as to the times of your visits to Place's mill?

(Plaintiff's counsel does not object to the examination of the book, so far as the memoranda in question is concerned, but he does not object to any further examination of the book, or of his examination of private entries therein, which do not relate to the entries in question, and requests that, if the book be submitted to the counsel, it be done by the witness, he pointing out the entries referred to.)

A. Yes, sir.

Q. Let me take it, then.

(Plaintiff's counsel here requests witness to present the book to defendants' counsel, and point out to him the entries referred to, and see if any further examination is made of the book, except the entries in question.)

Defendants' note.—The defendants' counsel states and insists that he has a right to inspect the said book, to ascertain whether there are blank leaves in it, preceding the leaf on which said memorandum is written, and also to ascertain the manner in which said book is kept by witness.

Plaintiff's note.—To which plaintiff's counsel replies that the memorandum-book in question is entirely of a private character, kept by the witness, and has not been introduced in evidence by the plaintiff, nor any entry thereon, and that defendant is not entitled to its inspection, or to any inquiries concerning it. That one reason why plaintiff's counsel objects to its inspection by defendants' counsel is, that on its being presented to him yesterday, at his request, for his examination of the entries referred to, with the injunction not to examine private entries thereon, in no wise connected with this matter, he did, as plaintiff's counsel believes, examine such private entries not referring to this case.

334 MEM.—Whereupon witness handed said book to defendants' counsel for examination.

Q. Since your last answer have you examined the said memorandum-book, and ascertained how many blank leaves it contains, on which there is no writing or memoranda, immediately preceding the leaf containing your memoranda of the times you visited Place's mill? And, if so, please state the number of such blank leaves.

(Objected to by plaintiff's counsel.)

A. I have examined it, and find thirty-one blank leaves immediately preceding it.

Q. How many leaves does the memorandum-book contain, from the commencement of the book to the commencement of these blank leaves?

(Objected to by plaintiff's counsel.)

A. Fourteen.

Q. Do these fourteen leaves contain memoranda?

(Objected to by plaintiff's counsel.)

A. They do.

Q. Please state the latest date on any of said fourteen leaves on said book, and also the earliest date.

(Objected to by plaintiff's counsel.)

A. The latest date is September 25. It is of last September, but the year is not down. The earliest date is December 26, 1868. I find an earlier date of November 9, 1869.

Q. On what leaf in said book is the memoranda of September 25, of last year, with reference to the first of the thirty-one blank leaves; that is, how many leaves is it before the commencement of said blank leaves?

(Objected to by plaintiff's counsel.)

A. The first leaf, before the commencement of the blank leaves.

Q. How many leaves does this memorandum-book contain beyond or after the last of said thirty-one blank leaves?

(Objected to by plaintiff's counsel.)

A. Ten.

Q. Do these ten leaves contain memoranda?

(Objected to by plaintiff's counsel.)

A. They do, all of them.

Q. Please state the earliest and also the latest date you find on any of these ten leaves.

(Objected to by plaintiff's counsel.)

A. The earliest is August 1, 1868; the latest, February 3d, 1871.

Q. Please state or give the size of said memorandum-book.

(Objected to by plaintiff's counsel.)

A. Six inches in length, and two and a half in width, by half an inch thick.

Q. Does it now contain all the leaves that it contained when you first got it?

(Objected to by plaintiff's counsel.)

335 A. As far as I know, it does.

Q. When did you get this memorandum-book? State as near as you are able.

(Objected to by plaintiff's counsel.)

A. I got it in the fall of 1867; latter part of fall or early part of winter.

Q. State whether or not you have in each year since 1867 kept a diary or memorandum-book other than this book.

(Objected to by plaintiff's counsel.)

A. I have not.

Q. In any of the said years?

(Objected to by plaintiff's counsel.)

A. No, sir.

Q. Is the memorandum made by you of your visit to Place's mill of Dec., 1869, and the memoranda of your visit to said mill of Feb., 1870, on the same page in your memorandum-book?

(Objected to by plaintiff's counsel.)

A. It is.

Q. Are you willing to allow the defendants to take the memoranda made by you in said book of your said visits to Place's mill, and use the same as an exhibit in this case?

(Objected to by plaintiff's counsel.)

A. No, sir; but you may have a copy. I may have farther use for it.

Q. Is there any memoranda on the same leaf of use to you?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

Q. Will you permit this book, or the leaf thereof containing your memoranda of your visit to Place's mill, to be used by the defendants as an exhibit in this case, if the examiner furnishes you with a certified copy of the contents of said book or of said leaf, or the part of said book so used, or permitted to be so used, as an exhibit?

(Objected to by plaintiff's counsel.)

A. No, sir; but I am willing the examiner shall furnish you with a certified copy of the entry of such visits.

(*Stipulated.*—It is stipulated by the plaintiff's counsel that he will produce the said memoranda of the witness's visits to Place's mill in Dec., 1869, and in Feb., 1870, to be used on the argument of this case, if ruled admissible by the court.)

Q. Did you make any memoranda of your visits to Place's mills, mentioned by you, subsequent to February, 1870?

A. No, sir.

Q. Where were you when you make the memoranda of you visit to the mill in Dec., 1859?

A. At our shop in Gloversville.

Q. How far from Place's mill?

A. I should think about a mile.

Q. Did you ever put bark-tanned sheep or lamb skins in warm fat liquor, and allow it to remain in such liquor overnight?

A. I have put them into fat liquor and let them remain over-
336 night; the fat liquor was warm when I put them in.

Q. When did you this?

A. I think it was in 1868.

Q. In pure fat liquor?

A. I don't now remember.

Q. Are you able to state whether or not there were other ingredients in this fat liquor?

A. I am not.

Q. Is this the only occasion of your leaving such skins in the liquor overnight, to your knowledge?

A. I can't say that it is; could not say whether it was or not.

On his redirect examination by plaintiff's counsel the witness further testified as follows:

If you desire to make any explanation in regard to the memorandum-

book, its purpose, the manner of keeping it, the entries in question, the blank leaves, etc., please do so.

(Objected to by defendants' counsel.)

A. As regards the blank leaves, they were not used, because I had no use for them; was merely a memorandum-book of no particular account; only carried it to make memorandums that might occur when I was away from my place of business and other books, and made that memorandum in connection with a number of other entries relative to other parties, all of which is consolidated in the back part of the book, also other entries relative to the same parties.

Q. Please state whether this book does or does not constitute one of the regular books of your business, or of the business of the firm of N. C. Russell & Co.?

A. It does both.

Q. How did you understand the last question? And if you have any further answer to make to it, please make it.

(Objected to it by defendant's counsel.)

A. I understood he meant whether there were any individual entries as well as company entries in the book. It does not constitute one of the regular books of the firm.

Q. In looking at the entry in the memorandum-book of your visit to Place's mill, February 14, I perceive the year is not entered. Do you know the year in which it occurred?

A. I do; in 1870.

Q. How soon after your visits to this mill respectively did you make the entries in your memorandum-book?

A. As soon as I could go from the mill to the shop. In about half an hour from the time of leaving the mill, to the best of my recollection.

Q. Were you sworn and examined as a witness on the trial at Albany, in October, 1870, between this plaintiff and Isaac V. and John W. Place, for an infringement of this patent, and did you there testify to these visits at Place's mill?

(Objected to by defendants' counsel.)

A. I was, and did.

337 Q. Will you produce and exhibit for identification a bark-tanned sheep-skin, treated and prepared for gloves according to Russell's patent?

A. I will; and here it is.

(Said skin, being produced, is marked "Plaintiff's exhibit No. 1, J. W., examiner.")

Q. Will you produce and exhibit for identification a bark-tanned lambskin treated and prepared for gloves according to Russell's patent?

A. I will; and here it is. (Marked "Plaintiff's exhibit No. 2, J. W., examiner.")

Q. In what condition were these two skins prior to treatment, and by what process were they prepared for mittens and gloves?

A. They were stiff and hard and full of squeak while in the bark-tanned state; were prepared by Mr. Russell's process.

Q. State whether or not they are fair specimens of the leather produced by Russell of bark-tanned sheep and lamb skins by his process, in accordance with his patent.

(Objected to by defendant' counsel.)

A. They are.

Q. Will you produce and exhibit for identification some specimens of

gloves made from bark-tanned sheep and lamb skins, treated and prepared according to Russell's process?

(Objected to by defendants' counsel.)

A. I will; and here they are. Those marked "Plaintiff's exhibit No. 3, J. W., examiner," are ladies' gauntlets, made of bark-tan'd lambskins. Those marked "Plaintiff's exhibit No. 4, J. W., examiner," are gents button-top driving-gloves. Those marked "Plaintiff's exhibit No. 5, J. W., examiner," are gents button-top driving-gloves, with flesher fourchette's.

Q. Please state whether the leather in those gloves was made of bark-tanned sheep and lamb skins, prepared by Russell's process?

(Objected to by defendants' counsel.)

A. It was.

Q. Will you produce an exhibit for identification, a bark-tanned sheep-skin in the condition such skins are in before treatment by the Russell process?

(Objected to by defendants' counsel.)

A. I will; and here it is. (Witness produces skin, marked "Plaintiff's exhibit No. 6, J. W., examiner.")

Q. Is this skin a fair specimen of bark-tanned sheep-skins in the bark-tanned state, before treatment by the Russell process, and used by you for gloves after such treatment?

(Objected to by defendants' counsel.)

A. It is.

Q. Will you produce and exhibit for identification a bark-tanned lambskin in the condition such skins are in before treatment by the Russell process?

(Objected to by defendants' counsel.)

A. I will; here it is.

338 Witness produced skin marked "Plaintiff's Exhibit No. 7, J. W., examiner."

Q. Is this skin a fair specimen of bark-tanned lambskin, in the bark-tanned state, before treatment by the Russell process, used by you for gloves after such treatment?

(Objected to by defendants' counsel.)

A. It is.

Recross-examination:

On his further cross-examination by the defendants' counsel, the witness further testified as follows:

Q. Has your firm during the time you have manufactured gloves from bark-tanned sheep and lamb skins, treated by what you call the Russell process, purchased and used for such manufacture the best class and quality of skins in the market?

(Objected to by plaintiff's counsel.)

A. Only in some instances.

Q. What do you mean by your last answer; state fully and particularly, and if you have ever endeavored to purchase an inferior class or quality of such skins state when, and your object in doing so.

(Objected to by plaintiff's counsel.)

A. I mean that we buy both kinds; we bought inferior grades every year, more or less for the object of putting them into gloves.

Q. State whether plaintiff's exhibits No. one and No. two, before treatment by what you call the Russell process, were what you regard as skins of the first class or quality.

A. The lambskin I would consider the first quality. The sheep-skin was not.

Q. What class or quality was the sheep-skin if not of the first quality?

A. Were the second or third quality, according to my judgment.

Q. Which second or third?

A. I can't tell which, second or third.

Q. Did you treat these two skins, namely, plaintiff's exhibits No. one and No. two?

A. I did.

Q. When and where?

A. Last August, at our shop in Gloversville.

Q. Did any one assist you?

A. There did not.

Q. Was there any one present during any part of the time you were treating them; and, if so, who?

A. I don't now remember.

Q. Please state with what, and how you treated them, in detail?

A. They were treated with heated fat liquor, salt, sal-soda, and soap, saturated in the same, then taken and hung upon the lines and dried; after being dried they were taken in and staked; that's all.

Q. Did you keep the time, so as to state precisely the time how long they were in the liquor? If so, state it.

A. I did not keep the time. I could not state the time within a few minutes.

Q. State as near as you can.

A. From five to ten minutes.

Q. Did you put both skins in at the same time?

339 A. I don't now remember.

Q. Did you take them both out at the same time?

A. I do not remember.

Q. Was each in the liquor the same length of time?

A. I should say they were.

Q. How did you ascertain when they had been in long enough?

A. By their feeling and appearance.

Q. You felt of them, and inspected them, to learn whether they were sufficiently saturated with the liquor, did you?

A. Yes, sir.

Q. How many times did you handle them and look at them during the time they were in the liquor?

A. The whole of the time.

Q. Did you squeeze them or wring them while in the liquor?

A. I pushed them and moved them about in the liquor, but did not wring them.

Q. Did you squeeze them?

A. I did not, if I understand the term squeezing.

Q. During the time you were saturating the skins, did you raise them out of the liquor to see if they were sufficiently saturated, and return them into the liquor again; and, if so, how many times?

A. I raised them partially out, and returned them, but don't remember how many times.

Q. Did you treat any other skins with these?

A. I did.

Q. How many?

A. I don't remember.

Q. State as near you can the number.

A. Three or four.

Q. Sheep or lamb skins?

A. Lambskins.

Q. Did you treat these two skins and the three or four others mentioned by you, for the purpose of selecting from them some for use as exhibits on this trial?

A. I did, but more particulary that I could testify that I fix'd them myself.

Q. Did you prepare the liquor in which these skins were saturated expressly to treat these few skins, and how much was there when prepared?

A. I did, but not expressly for these few skins. There was two barrels of it, or nearly that.

Q. When did you prepare the liquor with reference to the time you treated the skins?

A. The same day, just before I dipped them.

Q. Please state particularly just how you prepared the liquor with which you treated these skins; the different material or ingredients used in its preparation, and the quantity of each.

A. I prepared it as follows: I put salt, sal-soda, and soap into the fat liquor; heat the fat liquor. Put in about a quart of salt; I should say a half a pint or a little more of sal-soda; a quarter of a bar, I should think, of soap; about two barrels of fat liquor.

Q. Did you use the fat liquor as you obtained it from the mill, or did you reduce it with water; and, if so, how much water did you put in it?

A. We used it as we obtained it from the mill with the exception of heating and the other ingredients before mentioned; we did not reduce it.

Q. To what extent did you heat it?

A. I heat it up hot.

Q. How hot?

A. Couldn't say the degrees.

Q. Can you not state about how hot it was without stating the
340 degree of heat?

A. I think I can. It was so hot that I could not bear my hands in it.

Q. How do you know you couldn't bear your hands in it?

A. By the appearance and feeling.

Q. How soon after the liquor was heated, as you have stated, did you immerse the skins in it?

A. As soon as it was heated I dipped it from the kettle, and put it in a tub, and cooled it sufficient to work in with the naked hands. I then immersed the skins in it.

Q. What quantity of liquor was in the tub in which you immersed these skins?

A. Two or three pails, I should think.

Q. State when you put the soap, sal-soda, and salt in the fat liquor, and the manner of putting them in.

A. I put them in while the liquor was heating. I took a dipper and put the salt in with the dipper; throwed it in. I took a dipper and put the sal-soda in the dipper and threw it in the kettle, the soap in the same manner, then stirred them together.

Q. Did you treat any other skins than these on that day, and, if not, when next did you treat any?

A. I did not. Don't remember when next.

Q. Have you treated any since?

A. I have.

Q. About when?

A. I couldn't state exactly when.

Q. State as near as you can, and the number.

A. Since that time, and last Saturday; but can't state any nearer than I stated, and cannot state the number.

Q. Do you mean to be understood that you do not remember having treated any since that time until last Saturday?

A. I do.

Q. How many did you treat last Saturday?

(Objected to by plaintiff's counsel.)

A. Three.

Q. Had you treated any bark-tanned skins with fat liquor, or fat liquor and the other ingredients mentioned by you, before you treated plaintiff's Exhibit No. 1, No. 2, and the other skins treated by you on the same day; and, if so, when, and how many?

(Objected to by plaintiff's counsel.)

A. Yes, sir, I have treated them. The times when and how many I could not say.

Q. Did any person give you directions how to prepare the liquor for the treatment of plaintiff's Exhibits No. 1, No. 2, and the other skins treated by you on that day; and, if so, who?

A. I don't now remember that they did.

Q. Can you state whether they did or not?

A. I cannot.

Q. Do you claim that plaintiff's Exhibits No. 6 and 7, or either of them, are the best quality of that kind of skins; and, if not, what grade or quality do you call them?

A. In regard to quality of tannage, I should think them the best.

Q. It is the quality of the skin that I desire you to speak of, and not the quality of tannage?

A. In my opinion they are the best quality of that kind of skin that is sold for glove purposes.

Q. Do you desire to be understood as testifying that plaintiff's
341 Exhibit No. 7 is of as good a quality as plaintiff's Exhibit No. 2 before treatment with fat liquor?

A. I do.

On his further re-direct examination by plaintiff's counsel witness testified as follows:

Q. Were these two barrels, or nearly two barrels, of liquor spoken of on your last cross-examination, prepared for the purpose only of treating these exhibits and the other few skins that you treated personally with them; and, if not, for what purpose was it so prepared, and for what purpose used?

A. It was not prepared expressly for the exhibits and the few skins that were treated with them, but was prepared to fix bark-tanned sheep and lambs for general use in our glove manufactures, and was so used.

Q. By whom was it so used?

A. By one of our hands—I believe Mr. Allen.

Q. Please state whether, in the use of the fat liquor in the preparation of skins in your business, you or Mr. Russell personally treat the skins or otherwise; and if not, how, and under whose directions, are they treated?

(Objected to by defendants' counsel.)

A. We do not treat them personally; they are treated under my direction by our hands generally.

Q. When answering on your cross-examination, in reference to skins treated by you, other than these exhibits and those treated with them, did you refer to skins treated by you personally, in contradistinction to those treated by your hands, as you have described?

A. I referred to those treated by me personally.

Q. State whether these Exhibits Nos. 1 and 2 were or were not treated, substantially, as you treat all your bark-tanned skins for gloves.

(Objected to by defendants' counsel.)

A. They were.

Q. After heating the liquor with which you treated these exhibits, as you have described, how, if in any way, did you cool it sufficiently to bear your hands in it, and treat the skins?

A. By pouring cold fat liquor in it.

On his further recross-examination by defendants' counsel witness testified as follows:

Q. How much cold fat liquor did you use in cooling a barrel of the heated liquor?

A. Could not say, as I never did such a thing.

Q. How much did you use to cool the two pails of heated liquors used by you in the treatment of these exhibits and the few skins treated with them?

A. I should say about four quarts of prepared fat liquor cold.

Q. What do you mean by prepared fat liquor cold?

342 A. I mean fat liquor that has run off the skins after the skins have been saturated and spread on a tray or table, which we save and run into a barrel.

Q. In treating bark-tanned sheep and lamb skins by you, by what you call the Russell process, have you used salt, sal-soda, and soap with the fat liquor in every instance; and, if not, how different?

(Objected to by plaintiff's counsel.)

A. As far as I know, we do.

Re-direct examination:

On his further direct examination by plaintiff's counsel witness testified as follows:

Look at Exhibits Nos. 8 and 9. (Plaintiff's Exhibits Nos. 8 and 9 here shown witness.)

Q. State whether the squeak is out of those skins.

A. It is not.

Q. State whether, in their present condition, they are suitable for gloves.

A. They are not.

Q. State whether or not, by the process of staking alone, the squeak could be removed, and they could be rendered suitable for gloves.

(Objected to by defendants' counsel.)

A. The squeak could not be removed by staking, and they would not be suitable for gloves.

Re-cross-examination:

On his further cross-examination by defendants' counsel witness testified as follows:

Q. These skins could be made into gloves, could they not?

A. Yes, sir.

Q. By your answer, that in their present condition they are not suit-

able for gloves, do you mean simply that they are not as suitable as those treated by what you call the Russell process? and, if not, state what you do mean.

A. I mean that they could not be made into a saleable article.

Q. Do you mean to say that the gloves would not sell, or that they would not sell as readily as the others?

A. I mean that they would not sell for what they cost; also that they would not sell as readily as those treated.

Q. Did you ever have any experience in selling or trying to sell gloves made from skins such as plaintiff's Exhibits Nos. 8 and 9?

A. Not without the skins being prepared by the Russell process.

Q. Did you ever see a skin taken in the condition in which plaintiff's Exhibits Nos. 8 and 9 now are, and staked, so as to be able to state what would be its condition after being staked as to its suitableness for gloves?

A. I have.

Q. When and where?

A. To-day, and in our shop at Gloversville.

Q. You mean a skin such as those prepared for cotton-spinning rolls?

A. Yes, sir.

Q. Who staked it?

A. I did it myself.

Q. What effect was produced by the staking, as to making the skin soft and pliable?

343 A. It softened it, and made it a little soft and very squeaky.

Q. Have you more such skins that have not been staked at your shop?

A. We have.

Q. Will you sell two or three of them to the defendants, or one of them, that they may stake them for use as exhibits in this case?

A. No, sir.

Q. Will you produce for identification, now or at any future time during the taking of the testimony, the skins staked by you to-day, as you have stated, and which you state was in substantially the same condition before staking as Plaintiff's exhibits Nos. 8 and 9 now are?

A. I will, if the plaintiff or his counsel says so.

Q. Won't you otherwise?

A. I have no objection.

Q. Will you so produce it, then?

(Objected to by plaintiff's counsel.)

A. I will, if the plaintiff's counsel or plaintiff directs me to, or if they are willing.

Q. And not otherwise?

(Objected to by plaintiff's counsel.)

A. I am willing to produce it, if they wish it, as far as I am concerned.

Q. If who wish it?

(Objected to by plaintiff's counsel.)

A. Plaintiff or his counsel.

Redirect examination:

On his further direct examination by plaintiff's counsel, witness testified as follows:

Q. How would these Exhibits 8 and 9 compare in fitness and value for glove purposes after staking with Plaintiff's exhibits 1 and 2?

A. Those prepared for glove purposes would be worth nearly double

These are not fit after staking for glove purposes; that is, in comparison with Exhibits Nos. 1 and 2.

Q. Have you used for glove purposes the kind of leather seen in Plaintiff's exhibits 8 and 9, prepared for cotton-spinning roll? and, if so, state what, if any, treatment you subjected it to fit it for the gloves.

(Objected to by defendants' counsel.)

A. I have used such skins and subjected them to the Russell treatment.

Recross examination:

On his further cross-examination by defendants' counsel, witness testified as follows:

Q. How will Plaintiff's exhibits Nos. 8 and 9 compare as to quality and value with Plaintiff's exhibits 1 and 2 before treatment with what you call the Russell process?

A. The Exhibits 8 and 9 are much superior in quality to Exhibits Nos. 1 and 2 before treatment, and are in value one-third more.

JOHN FULTON.

Subscribed and sworn this 17th day of March, 1873, before me.

JACOB WENDELL,
Special Examiner.

344 DANIEL S. HULETT, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside at Gloversville, in the county of Fulton; I am 41 years old; I am a manufacturer of mittens and gloves, and have been about ten years steady. I commenced manufacturing in 1855; I bought and sold gloves and mittens four years; I have also been engaged in dressing leather; before 1855 I worked at dressing; I haven't since that.

Q. State whether you have been familiar with the business of dressing leather and manufacturing mittens and gloves, and the kinds of mittens and gloves made in Gloversville and vicinity, for any length of time; and, if so, for how long?

(Objected to by defendants' counsel.)

A. I have, for twenty-five years.

Q. Are you acquainted with the leather made from bark-tanned sheep and lamb skin by what is known as the Russell process?

(Objected to by defendants' counsel.)

A. Not very much.

Q. You know it, don't you?

(Objected to by defendants' counsel.)

A. I think I do.

(Plaintiff's exhibits No. 1 and 2 shown witness, and the following question asked.)

Q. Please state whether you ever saw or knew of any such leather as that now shown you, prior to about 1869?

(Objected to by defendants' counsel.)

A. I don't remember as I ever did.

Q. Are you acquainted with the bark-tanned sheep and lamb skins in the bark tanned state?

A. I am, some.

Q. Please state whether these are, or are not, in that state, suitable for gloves?

A. I never saw any that was.

Q. Please state whether these Exhibits No. 1 and No. 2 are unsuitable for gloves?

A. I should think they was.

Q. State whether the leather, as shown in these two exhibits, is, or is not, more suitable for gloves than bark-tanned sheep and lamb skins in the bark-tanned state; and, if so, how much? State the difference as well as you are able.

A. I should think these were, but I never saw any in the bark-tanned state that I thought were suitable. They are softer and more pliable. I should say there was quite a difference between them and the original bark-tanned state. I should say these were worth one-third more, according to my judgment.

Q. Please state whether Mr. Dodge, the defendant, prepared any bark-tanned sheep and lamb skins for you for mittens and gloves; and, if so, when?

A. He done some for me in 1856, I think.

345 Q. Please state for what purpose they were taken there, and in what condition they were when returned to you by him.

(Objected to by defendants' counsel.)

A. They were bark-tanned fleshers, taken there to be finished and softened for gloves. He finished them, and they were very little softer when they came back.

Q. Please state whether or not the squeak was out when they came back.

A. It was not.

Q. Please state how the leather, when it was returned to you, would compare with the Exhibits No. 1 and 2 in its suitableness for mittens and gloves.

A. It wasn't near as soft, and it wasn't as suitable for gloves.

Q. Is the squeak out of Exhibits No. 1 and No. 2?

A. It is.

Q. Did you at any time apply to Samuel Dodge, senior, the defendant, to show or inform you how to soften bark-tanned horse-hides?

(Objected to by defendants' counsel.)

A. I don't know as I applied to him. I told him I should like to find some way to soften them, and he told me what to do.

Q. About when was that, and what did he tell you to do?

(Objected to by defendants' counsel.)

A. It was either in 1862 or 1863. He told me to take some soft-soap, and make some strong soap-suds, and dip them in it, dry them, and stake them out, and it would soften them up.

A. Are you able to state whether or not, for the last ten years, more or less, gloves have been sold under the name of "dog-skin," in Gloversville and vicinity, which were made from various kinds of leather prepared in different ways?

(Objected to by defendants' counsel.)

A. They have been sold and made from various kinds of leather, but whether they have been prepared in different ways or not I don't know

On his cross-examination by defendants' counsel, witness testified as follows:

(Defendants' counsel here handed to the witness plaintiff's Exhibit. No. 1, and asked him the following questions:)

Please examine that skin, with a view of ascertaining whether or not it now contains squeak, and state the result of your examination in that regard.

A. There is some in the centre of the skins.

Q. Some what?

A. Some squeak.
Q. In the heaviest part of the skin?
A. It is.
Q. Referring to the bark-tanned fleshers, which you say the defendant Dodge treated for you in 1856, do you remember that you told him that you wanted them prepared for boys' mittens?
A. No, sir; I do not.
346 Q. Can you state whether you did or did not?
A. I don't think I did.
Q. Can you state positively?
A. I could not.
Q. Were these skins treated by Dodge buffed?
A. I couldn't say whether he buffed them, but I should think he did.
Q. Leather for boys' mittens does not require that degree of softness that is required for gloves, does it?
A. It does not.
Q. The horse-hides referred to by you on your direct were not intended for gloves, were they?
A. Gloves and mittens both; coarse gloves.
Q. What are called dog-skin gloves?
A. No, sir.
Q. In the glove business in Gloversville and vicinity are bark-tanned sheep and lamb skins sometimes made into gloves in the bark-tanned state; and, if so, for how long have you known such?
A. I think I have seen some there, but I can't tell how long ago it was.
Q. State as near as you can when you first saw them.
A. I saw them made of bark-tanned fleshers as long ago as 1856.
Q. Have you ever made them?
A. I made some of those fleshers that Mr. Dodge finished for me.
Q. Have you bought and sold them, other than those you made?
A. I think I bought some in 1862 or 1863, made of bark-tanned fleshers.

Redirect examination:

On his further direct examination by plaintiff's counsel, witness testified as follows:

Q. Please state whether, for practical purposes, in the manufacture of gloves, the squeak is or is not removed from plaintiff's Exhibits Nos. 1 and 2.
(Objected to by defendants' counsel.)
A. It is, for all practical purposes, I should think.
Q. I understand you to say that you think you did not request Dodge to prepare those skins for boys' mittens?
(Objected to by defendants' counsel.)
A. I don't think I did, for I wanted them for gloves and mittens both.
Q. Please state whether that leather prepared by him for you would or would not have been more valuable and suitable for mittens and gloves if it had been made soft and the squeak removed from it, as you see in plaintiff's Exhibits Nos. 1 and 2.
(Objected to by defendants' counsel.)
A. It would.

Recross-examination:

On his further cross-examination by defendants' counsel, witness testified as follows:

Q. Are you able to state whether a bark-tanned skin treated with fat liquor can be buffed when the skin is or has been thoroughly saturated with the fat liquor so as to make a good job of it?

(Objected to by plaintiff's counsel.)

347 A. I couldn't say; I have never had any experience of the kind.

DANIEL S. HULETT.

Taken, subscribed, and sworn this 17th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

CHARLES G. LINSLEY, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside at Syracuse. I am a stenographer. I have acted as a short-hand reporter in the United States court between six and seven years; have been engaged in the business as stenographer between seven and eight years. I was present at a term of the United States court held in Utica in March, 1871, as reporter, and reported stenographically the evidence taken there in a suit between this plaintiff and Albert Klein for an infringement of plaintiff's patent. I have now before me the evidence, as reported on that occasion in that suit. William H. Monroe was there sworn and examined as a witness for the defendant on that trial.

Q. When asked, in substance, how the leather used for spinning-machines, and prepared by him while employed by Smith & Sons at Dedham, was prepared in the first instance, did he answer in substance, that it was prepared in various ways? Sometimes similar to the fat liquor, or oil and alkali method described by him, and sometimes very different?

(Objected to by defendants' counsel, and also objects to the witness' reading from his memoranda or report of the testimony. Question waived by plaintiff's counsel for the present.)

Q. Have you the original notes taken by you at that trial?

A. I have not.

Q. Will you please state where they are, if you know, and if not, whether you have made search for them and what?

A. I do not know where they are. I have made diligent search among all my short-hand minutes, and in every place where I could think I would be likely to find them, but was unable to find them.

Q. Please state whether you have the evidence taken on that trial, as written out from those minutes, and by you compared with those minutes, and if you have, whether such transcript is correct.

(Objected to by defendants' counsel.)

A. I have. The first, 160 pages is in my own handwriting; the
348 balance is in the handwriting of three different amanuenses. The transcript was compared by me with the original minutes. I believe it to be correct.

Q. Are you now able, by reference to that or otherwise, to state correctly the evidence of the several witnesses taken on that trial?

(Objected to by de endants' counsel.)

A. I am, by reference to this transcript.

Q. By reference to this transcript or otherwise, please answer the question before put to you in relation to the evidence of William H. Monroe.

(Objected to by defendants' counsel, unless witness can answer from memory, unaided by the transcript referred to by him.)

A. He did, substantially.

Q. In answer to the question put to him, "How many skins did you dress in that way per year at Dedham," did he answer that "I have no means of ascertaining; I couldn't tell how many I dressed with fat liquor, because that is a thing I never approved of and never liked, and seldom used it?"

A. He did.

Q. In speaking of the skins treated by him with fat liquor at Dodge's, did he say "that he used the fat liquor cold?"

A. He said, "I think cold."

Q. In speaking of the skins treated by him with fat liquor at his shop at Gloversville, the next after those done at Dodge's, did he say in substance, "they were done by way of experiment?"

A. He did.

Q. Did he say in reference to the treatment of these, "that the liquor was cold?"

A. He said, "I think cold, mostly."

Q. Did he say that the next lot treated by him with fat liquor "consisted of half a dozen?"

A. He did not.

Q. Did he speak of "a half-dozen;" and, if so, which lot were they in reference to the lot just enquired of?

A. He did. The half-dozen were in 1867 or 1868, at his house, while the lot referred to in the previous question was in 1865, at his shop, according to his testimony.

Q. Did he testify in substance that from the time he did skins at Dodge's in 1864, as described by him, down through to 1866, and the time he did some with Gillett, he experimented in different ways?

A. He testified in answer to the question "Did you experiment in other ways also, as well as with fat liquor?" He answered, "Yes, sir." "All through from 1864 to 1866, did you try other experiments also?" Answer. "Yes, sir." "For softening the bark-tanned skins?" Answer. "Yes, sir."

Q. Did he testify that he did not remember whether he told Gillett to use the liquor warm or cold?

A. He did.

Q. Did he testify that he was quite confident that Gillett purchased skins of him?

A. He did.

Q. In speaking of his telling Russell, the plaintiff, about the use of fat liquor, did he testify in substance that he did not say any-
349 thing to him about using the liquor cold or hot.

A. He did.

Q. Was there a witness there sworn and examined on the part of the defendant by the name of Harman Krause?

A. There was.

Q. After mentioning the use of the kind of leather in question, by I. V. Place, Russell, the plaintiff, and Dunson, did he not say in substance "that he did not remember anybody else that used it prior to 1869?"

(Objected to by defendants' counsel.)

A. In answer to the question, "Do you remember any other person, that your attention was called to, in reference to any particular kind of leather?" he said, "I don't remember anybody in particular, prior to 1869."

Q. Had he, prior to this question and answer just given, mentioned

any other persons as using that leather, except I. V. Place, Russell, the plaintiff, and Dunson?

A. He had not.

Q. Was there a man by the name of Henry Hull sworn and examined as a witness on that trial on the part of the defendant?

A. There was.

Q. In this testimony, in speaking of the treatment of bark-tanned skins at Spaulding's in the fall of 1857, did he say, in substance, "that he first got some soft soap and soda and tried that on the skins, and it didn't appear to work good, didn't soften the skins to suit him, so he went to the mill and got the fat liquor and tried that?"

A. He did.

Q. Did he testify that most of those treated by him at Spaulding's, he sponged on the liquor; that a few of the skins he dipped, or that in substance?

A. He did.

Q. In testifying of the lot of skins treated by him and Adam Quackenbush, did he not say, "We done five dozen of them in fat liquor, and five dozen with soft soap and soda, and oil mixed in, for to see which would be the best five dozen?"

A. He did.

Q. Did he not testify in substance that it was in the winter season, he thought somewhere in November, but it might have been in January, that he did the Quackenbush skins?

A. He did.

Q. Was there a witness sworn and examined on that trial on the part of the defendant, by the name of Uriel Case?

A. There was.

Q. In giving his testimony, did he say anything at all about the squeak in the leather, after his treatment of the skins with fat liquor?

A. He did not.

Q. Was there a witness sworn and examined on that trial on the part of the defendant by the name of John W. Place?

A. There was.

Q. In speaking of the leather produced by him in 1856, did he say, in substance, "that it was not as nice, nor anything like it, as the specimens then produced and shown him, said to have been treated according to Russell's patent?"

(Objected to by defendants' counsel.)

A. He did.

Q. In speaking of the effect produced by the fat liquor on those
350 treated in 1856, did he say anything at all about the squeak?

A. He did not.

Q. Was there a witness sworn and examined on that trial, on the part of the defendant, by the name of Samuel Dodge?

A. There was.

Q. Did he there, in giving his testimony, say anything in regard to the class, kind, or quality of skins to which he applied oil and eggs, and the secret process or ingredient to which he referred as used by him, or did he speak generally of having sometimes used fat liquor, and sometimes the other ingredients mentioned by him without discriminating the occasions of such use?

(Objected to by defendants' counsel.)

A. To the first clause of the question I answer no; to the latter clause, yes.

Q. In giving his experience of the treatment of bark-tanned sheep

and lamb skins, did he not state generally, in substance, that he sometimes used fat liquor, and sometimes oil and eggs, and his secret process, without specifying or discriminating the class, kind, or quality of skins to which he applied these several materials?

(Objected to by defendants' counsel.)

A. He did.

Q. In speaking of the use of fat liqour on bark-tanned skins in 1870 and 1871, did he not say in substance that he generally used it cold?

A. He did.

Q. In naming the persons from whom he had treated bark-tanned skins with fat liquor, did he mention David Spaulding, the Heacocks, Chapman & Warring, Chapman & Logan, or Dunson?

(Objected to by defendants' counsel.)

A. He did not.

Q. In speaking of the length of time that he worked at bark-tanned skins for Ricketts, did he say, in substance, that he worked at them occasionally during the whole time he was with him; that he could not tell the proportion of the time, but did not think it one-eighth?

(Objected to by defendants' counsel.)

A. He did.

Q. Did he there state on what kind or classes of the bark-tanned skins treated by him for Ricketts he used other processes and ingredients than fat liquor?

(Objected to by defendants' counsel.)

A. He did not.

Q. Did he there specify any particular class or quality of the bark-tanned skins treated for Ricketts to which he applied the fat liquor mixed with other ingredients?

(Objected to by defendants' counsel.)

A. He did not.

Q. Did he specify any particular kind or quality of skins to which he applied the fat liquor mixed with the secret process or ingredients?

(Objected to by defendants' counsel.)

A. He did not, except that he speaks of bark-tanned skins
351 being treated by him.

Q. Did he specify or discriminate from others any particular class or quality of skins that he treated with his secret process and eggs?

(Objected to by defendants' counsel.)

A. He did not.

Q. Did he specify or discriminate from others any particular kind or class of skins to which he applied his secret with eggs, and to which he applied it with the fat liquor and eggs?

(Objected to by defendants' counsel.)

A. He did not.

Q. In speaking generally of the bark-tanned sheep and lamb skins treated by him for Ricketts, did he say, in substance, that he sometimes dipped the skins in the liquor and sometimes brushed it on?

(Objected to by defendants' counsel.)

A. He did.

Q. Did he testify that the egg process was considerably more expensive than the fat liquor?

(Objected to by defendants' counsel.)

A. He did.

Q. Did he testify in substance that he did not then use the egg process?

(Objected to by defendants' counsel.)

A. He did.

Q. Was he asked, in substance, why he did not use it, and in reply did he say "because it was a little more expensive?"

(Objected to by defendants' counsel.)

A. He was and did.

Q. Did he testify that he did not use his secret process alone?

(Objected to by defendants' counsel.)

A. In answer to the question, "Did you sometimes use that process of yours, that you won't tell about, alone?" he said, "No, sir."

Q. Did he there testify that most of those he did for Ricketts were split skins?

(Objected to by defendants' counsel.)

A. He said, "Most of them were split sheep."

Q. In speaking of a lot treated by him for Churchill, did he say in substance that he sometimes used his secret process in connection with fat liquor?

(Objected to by defendants' counsel.)

A. He said that he used fat liquor on that job, and that he put in his secret process there.

Q. When asked in substance to specify the next lot or instance to which he applied the fat liquor to bark-tanned sheep or lamb skins, after the lot treated for Churchill, did he testify in substance in reply that "he could not tell; that he kept on working at it, more or less, all the time; that the next he remembered was for Gilchrist; that he worked right along, sometimes at Churchill's, sometimes at Gilchrist's, and sometimes at Judson's; that the work was mixed up; probably one day he would work at one man's work, and another day at another's, and that this continued on for two or three years, more or less?"

352 (Objected to by defendants' counsel.)

A. He did.

Q. In speaking of a lot done for Nickerson, did he say that they were twenty-five or thirty dozen?

(Objected to by defendants' counsel.)

A. He said about twenty-five or thirty dozen, I think.

Q. Did he say, in substance, that it might have been two or three years, or more, after doing Nickerson's, before doing Judson's, but that he could not tell anything about it?

(Objected to by defendants' counsel.)

A. He did.

Q. Did he testify, in substance, that he did not treat any skins with fat liquor in 1869?

(Objected to by defendants' counsel.)

A. In answer to the question, "Did you do any in 1869?" he said "No."

Q. Did he testify, in substance, that the lot done by him for Nickerson was then about twelve years ago, and that it consisted of twenty-five or thirty dozen?

(Objected to by defendants' counsel.)

A. He testified that it was somewhere in the neighborhood of twelve years ago, and that he did then about 25 or 30 dozen, he thought, and he afterwards testified that this of Nickerson's was about twelve years ago.

Q. In giving the alleged interview between himself and Russell, the plaintiff, in reference to softening bark-tanned sheep and lamb skins with fat liquor, did he say anything about telling Mr. Russell to apply

the fat liquor to the skins the second time if they were not soft enough?

(Objected to by defendants' counsel.)

A. He did not.

Q. On being asked to state the conversation between himself and Russell on that occasion, did he answer as follows: "He came there and asked me if I would do some bark-tanned skins for him; why I had not done them before. I told him I hadn't had any time at all to do them; I had other business to attend to, but that he could do them as well as I could myself by putting fat liquor to them and hang them out?"

(Objected to by defendants' counsel.)

A. He did.

Q. And when asked what plaintiff said to that, did he not answer, in substance, that he did not know as he made any reply?

(Objected to by defendants' counsel.)

A. He did.

On his cross-examination by defendants' counsel the witness further testified as follows, to wit:

Q. Have you a present recollection, unaided by memoranda or notes, of the testimony given by the several witnesses, or any of them, on the trial of the case of Russell against Klein, at Utica, testified to by you on your direct examination in this case?

A. I have some general recollection, but very little.

Q. Sufficient to enable you to speak with any degree of accuracy as to what they there testified to?

A. No.

Q. After looking over and reading the transcript or copy-transcript used by you on your direct examination of the testimony and proceedings in the case at Utica, have you a present recollection enabling you to testify positively from recollection as to what the witnesses, or any of them, mentioned by you on your direct examination, there testified to?

A. No.

Q. Is it possible that the notes taken by you of the testimony and proceedings on the trial at Utica may have been incorrect in some particulars?

A. It is possible.

Q. Are you able to say that such notes were entirely accurate?

A. I am not able to say so positively, but I believe they were.

Q. When asked on your direct examination whether Monroe, on the trial at Utica, when asked in substance how the leather used for spinning-machines, and prepared by him, when used by Smith & Sons at Dedham, was prepared in the first instance, did he answer, in substance, "that it was prepared in various ways, sometimes similar to the fat-liquor or oil-and-alkali method described by him, and sometimes very different," to which you answered, "he did, substantially," did you give the answer made by the witness at Utica, as you then reported it, and the whole of his answer? and, if you did not, please give the question there asked him on that subject and his answer in full.

A. I did not. The question there asked him was as follows: "How were those that were to be used for the spinning-machines prepared in the first instance?" To which he answered: "Prepared in various ways; sometimes similar to this, and sometimes very different; I think they were mostly prepared similar to these, but not exactly like them."

Q. If the witness Monroe was there further questioned, and further

answered on the same subject, please give the questions asked him and the answers thereto; I mean the two following questions and answers.

(Objected to by plaintiff's counsel.)

A. The two following questions and answers, after the question and answer mentioned in my last answer, were as follows: "How did they differ from those? A. By being softer. Q. Prepared in the first instance softer? A. Yes, sir."

354 Q. Please give the question asked of Monroe, and his answer thereto on the trial at Utica next after your answer to interrogtory No. 7 in your direct examination.

(Objected to by plaintiff's counsel.)

A. The question asked him was, "Well, as near as you can tell?" and his answer was, "I couldn't tell; I used it at different times, just as suited my convenience—perhaps about ten thousand skins."

Q. In answer to interrogatory No. 9, in your direct examination, did you give the exact words of the witness? And, if not, please give the question and his answer thereto.

A. I did not. The question asked the witness was, "About how many?" and his answer was, "Couldn't tell; I did it for experiment, to show people."

Q. Did you give the whole of the answer of the witness in your answer to interrogatory No. 10, in your direct examination? And, if not, give the question asked the witness, and his answer thereto in full, and also the question and answer preceding.

A. I did not. The preceding question asked the witness was, "How did you treat them?" His answer thereto was, "Treated them with the fat liquor." The next question asked him, and to which my answer to interrogatory No. 10 refers, was, "In what way?" His answer thereto was, "By dipping them into it; I dipped them there I think cold, mostly; I can't recollect exactly about that."

Q. In your answer, on your direct examination, to interrogatory No. 21, did you give the question asked the witness and his answer thereto in full? And if you did not, please do so, together with the four following questions and answers.

(Objected to by plaintiff's counsel, specifically, so far as it calls for "the four following questions.")

A. I did not. The question asked the witness was, "Will you state how you prepared that liquor, and how you did the skins?" His answer thereto was, "Well, I was doing this job of work for Mr. Spaulding. He had a great deal of kid work, and coloring of oil-dressed and flesher-skins. He brought some of these bark-tans to me to make them soft. I got the fat liquor right from the tub; I warmed it. First I got some soft soap and soda and tried that on the skins, and it didn't appear to work good; didn't soften the skins to suit me; so I went into the mill and got the fat liquor and tried that; tried it with a sponge."

The next four questions put to him, and his answers thereto, were as follows:

"Q. Hot or cold?"—"A. A little milk-warm some of it was, and some of it was cold." "Q. You sponged it on?"—"A. Yes, sir." "Q. How did that work?"—"A. That worked first-rate, to a charm." "Q. Is that the way you did most of them?"—"A. Yes, sir; a few of the skins I dipped."

355 Q. In answer to interrogatory No. 28, on your direct examination, did you give the question put to the witness, and his answer thereto, in full? And if not, do so now, together with the question and answer immediately following.

(Plaintiff's counsel objects to that part of the question which calls for the "following question and answer.")

A. I did not. The question put to the witness was: "Q. Those skins were not brought to the condition of these, were they?—A. Oh, it wouldn't make as nice leather as you have got here." The next question put to him was: "Q. Nothing like, would it?—A. No, sir."

Q. Did this witness, John W. Place, on the trial at Utica, state to what skins he referred, or did he say anything of skins treated according to Russell's patent?

(Objected to by plaintiff's counsel.)

A. There were several skins before him, and he does not say in his testimony to which of them he referred in the answers quoted in my last answer. He said nothing about skins treated according to Russell's patent in that connection.

Q. Referring to your answer to interrogatory No. 54, on your direct examination, are you able to give the exact language used by the witness on the trial at Utica?

A. I believe I am.

Q. Will you swear positively that you gave his exact language on your direct examination?

A. I will not from memory.

Q. Please give the next four questions and answers of the witness following the answer given by you on your direct interrogatory No. 54.

(Objected to by plaintiff's counsel.)

A. They are as follows: "Q. What did he say to that?—A. I don't know as he made any reply, but in the course of a few days he brought some skins up to me, and asked me to color them for him. I did so. Q. Were they bark-tan?—A. Yes, sir. Q. What was their condition?—A. Well softened. Q. Suitable for gloves?—A. Yes, sir."

(Plaintiff's counsel moves to strike out all of the last answer of witness after the words, "I don't know as he made any reply.")

Q. In your answer on the direct to interrogatory No. 33, did you state all that the witness stated on the trial at Utica in regard to his use of fat liquor on bark-tan skins in 1870 and 1871? And, if you did not, please give the questions asked of him, and his answers thereto in that regard, giving the five questions and answers thereto, commencing with the question, "These that you did in 1870 and 1871, did you use fat liquor?"

A. I did not; the five questions and answers referred to are as follows:

"Q. These that you did in 1870 and 1871, did you use fat liquor?—A. I did. Q. Did you use it warm?—A. I did. Q. Generally?—A.
356 No, sir; generally used it cold. Q. Occasionally used it warm?—A. Yes, sir. Q. How often did you use it warm?—A. Well, if I was doing any in cold weather I used it warm; when in warm weather I used it cold."

Q. State whether or not the witness Dodge, when testifying on said trial at Utica, was interrogated as to the class, kind, or quality of skins to which he applied oil and eggs, and the secret process or ingredient to which he referred as used by him.

(Objected to by plaintiff's counsel.)

A. He was not.

Q. State whether or not the said witness, when giving his experience of the treatment of bark-tanned sheep and lamb skins referred to by you in your answer to the 32d interrogatory on your direct, was interrogated or asked to specify the class, kind, or quality of skins to which

he sometimes used or applied fat liquor and sometimes oil and eggs and his secret process.

(Objected to by plaintiff's counsel.)

A. He was not.

Q. Was the said witness on the trial at Utica, when referring to the skins treated by him for Ricketts, asked or interrogated as to what kind or class of said skins he used other processes and ingredients with the fat liquor, or was he there asked or interrogated as to what class or quality of the bark-tanned skins he treated for Ricketts he applied the fat liquor mixed with other ingredients or alone?

(Objected to by plaintiff's counsel.)

A. He was not, in either form, as stated in the question.

Q. Was he there asked or interrogated as to any particular kind or quality of skins to which he applied the fat liquor mixed with his secret process or ingredient, or was he there asked to discriminate or specify from others any particular class or quality of skins that he treated with his process or his secret and eggs?

(Objected to by plaintiff's counsel.)

A. He was not.

Q. Was he there asked to specify or discriminate from others any particular kind or class of skins to which he applied his secret with eggs, or to which he applied it with the fat liquor and eggs?

(Objected to by plaintiff's counsel.)

A. He was not.

Q. Referring to interrogatory No. 43 on your direct and your answer thereto, can you now testify positively that he there testified that he did not then use the egg process?

A. I can.

Q. From memory?

A. No, sir.

Q. Can you from memory, after examining your memoranda?

A. I have no memory of that evidence, aside from my memoranda.

Q. Have you with your memoranda so as to swear positively to it?

(Objected to by plaintiff's counsel.)

357 A. No, sir.

Q. Referring to interrogatory No. 26 on the direct, and your answer thereto, state whether or not the witness Uriel Case was on the said trial at Utica asked or interrogated at all in regard to the squeak in the leather after his treatment of the skins in fat liquor.

(Objected to by plaintiff's counsel.)

A. He was not.

Q. Referring to interrogatory No. 29, put to you on the direct, and your answer thereto, state whether or not on the trial at Utica the witness John W. Place was asked or interrogated in regard to the squeak in the skins or the effect produced by the application of fat liquor upon the squeak in the skins.

(Objected to by plaintiff's counsel.)

A. He was not interrogated specifically in regard to the squeak in the skins or the effect of fat liquor produced upon the squeak in the skins.

On his redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. In giving on your direct examination the evidence of the various witnesses on the trial at Utica as to which you were interrogated, did you state that evidence as it appears upon the transcript of the evidence made from your original minutes, and do you believe that transcript to be correct?

(Objected to by defendants' counsel.)

A. I did not state the evidence literally as it appears in all cases, but I gave my evidence wholly by reference to the transcript. I know the transcript to be a correct copy of my minutes taken on the said trial, and I believe the minutes were taken correctly.

Q. Did you state the evidence called for by the questions put to you in substance, and correctly?

(Objected to by defendants' counsel.)

A. I did.

Q. Please give the twelve questions and answers in the evidence of Henry Hull following the four given on your cross-examination.

(Objected to by defendants' counsel.)

A. They are as follows: "Q. What season of the year was that?—A. Fall and spring. Q. After doing that with them, what did you do?—A. Hung them up-stairs to dry, and after they got dry I brought them down stairs and mooned them. Q. That is, taking a circular knife and shaving off the flesh side?—A. Yes, sir. Q. Will that process itself soften the skin?—A. It will make a skin soft in a certain degree, but it won't kill the squeak. Q. But the tendency of mooning the skin is to soften it?—A. Yes; it will help soften it. Q. And all these
358 skins were mooned, were they?—A. The biggest part of them. Q. About how long were you occupied in the sponging process with each skin?—A. Well, it would take a second probably. Q. Did you sponge them more than once?—A. Sometimes I sponged them three or four times. Q. The same day or after they had dried?—A. After they had dried, then sponged out again. Q. How long would it take them to dry?—A. Probably an hour if the wind was nice and spry. Q. Then you took them down and put them through the same process again?—A. Yes, sir; and then, when they was dry, the next time I would take them down and dampen them down in a box, let them stay there till the next morning. That would be the third time I took them down; then in the morning I would take them out of the box and moon them. Q. Then they were done?—A. Yes, sir."

Q. Was this question put to John W. Place on the trial at Utica: "Have you known anything about the use of fat liquor in the treatment of bark-tanned sheep and lamb skins?" If so, please give his answer to that question, and also the five following questions and answers.

(Objected to by defendants' counsel.)

A. It was. His answer was "Yes, sir." The five following questions and answers were: "Q. When did you first know it to be used for that purpose?—A. In 1867. Q. By whom?—A. By myself. Q. State to what extent you used it in 1856.—A. I made in the neighborhood of two hundred dozen of bark-tanned gloves and mittens, to the best of my recollection. Q. How did you treat the bark-tanned skins?—A. Put the fat liquor on with a sponge. Q. Warm or cold?—A. Put it on cold."

Q. On his cross-examination at Utica, was this question put to him: "In 1856 where did you get these bark-tanned skins that you used?" And, if so, please give his answer to that question, and the eight following questions and answers.

(Objected to by defendants' counsel.)

A. It was. His answer was, "My impression is that I bought them from David Spaulding, but I am not sure." The eight following questions and answers were: "Q. There were enough skins to make about two hundred dozen gloves?—A. Yes, sir. Q. How many skins would that be?—A. Well, perhaps a hundred dozen, or in that neighborhood. Q. Any one help you do that?—A. Yes; I was in partnership with Ab-

ner A. Johnson. Q. Did he help?—A. Yes, sir. Q. In that case you took the skins in their tanned state, and put the oil on with a sponge?—A. Yes, sir; just dampened the skin on one side. Q. Did you do that to the skins more than once?—A. No, sir. Q. Those skins were
359 not brought to the condition of these, were they?—A. Oh, it wouldn't make as nice leather as you have got here. Q. Nothing like, would it?—A. No, sir."

Q. When John W. Place, the witness, made the following answer, just given by you, "Oh, it wouldn't make as nice leather as you have got here," did he have before him specimens of leather said to have been prepared by Russell's patent process?

(Objected to by defendants' counsel.)

A. My recollection is that there were three or more such skins in court during the whole progress of the trial. I can give no farther answer to the question.

Q. And were or were not those skins, according to your recollection, used as exhibits on that trial and shown to the various witnesses who testified in relation to that kind of leather during the trial?

(Objected to by defendants' counsel.)

A. They were used as exhibits and shown to most of the witnesses, but whether to all I do not remember.

Q. State whether or not the witness Samuel Dodge was called upon on that trial to give his experience in the use of fat liquor; also oil and eggs, his secret process, and other ingredients in the treatment of bark-tanned skins.

(Objected to by defendants' counsel.)

A. He was examined at considerable length on those points. I can answer the question no further.

Q. When answering, on your cross-examination, in substance that Dodge was not asked as to the class, kind, or quality of skins to which he applied oil and eggs, fat liquor, and his secret process or ingredient, and as to which he applied these and other ingredients in the manner and combination mentioned in the several questions to you, do you refer to specific questions, and do you mean to be understood as testifying that the course and scope of his examination did not call for his experience and practice in these particulars?

(Objected to by defendants' counsel.)

A. I answered with reference to the fact that he was not asked that specific question. I do not mean to be understood as testifying that the course and scope of his examination did not call for his experience and practice in those particulars.

Q. Was Mr. Dodge asked this question, "Have you used the egg process within the past two or three years?" and, if so, please give his answer to that question, together with the following three questions and answers.

(Objected to by defendants' counsel.)

A. He was. His answer was, "No, sir." The three following questions and answers: "Q. Don't use that now?—A. No, sir. Q. That
360 makes a pretty good job, don't it?—A. Yes, sir. Q. Why don't you use it?—A. Because it is a little more expensive."

Q. Was John W. Place on the trial at Utica asked this question, "What was the effect of the fat liquor upon the skins, both in 1856 and 1857?" and, if so, what was his reply to that question?

(Objected to by defendants' counsel.)

A. He was. His answer was, "Made them soft."

Q. Did he state anywhere in his evidence the removal of the squeak as an effect in the use of fat liquor upon a bark-tanned skin?

(Objected to by defendants' counsel.)

A. He did not.

Q. Was Uriel Case, the witness, asked at Utica, in substance, the effect of fat liquor, in his experience, upon bark-tanned sheep and lamb skins; and, if so, did he in reply, or anywhere in his evidence mention the removing of the squeak?

(Objected to by defendants' counsel.)

A. He was. He did not in his reply, or anywhere in his evidence, mention the removing of the squeak.

Q. Was this question put to Monroe: "Where you told Mr. Russell about the use of fat liquor, did you tell him to use it cold or hot?" and, if so, what was his answer?

(Objected to by defendants' counsel.)

A. It was; and his answer was, "No, sir; I didn't say anything about that."

Q. While Monroe was testifying in relation to giving Gillett directions or processes for treating bark-tanned sheep and lamb skins, was this question put to him: "Did you undertake to tell him how to soften those skins?" and, if so, please give his answer thereto and the five following questions and answers.

(Objected to by defendants' counsel.)

A. It was. His answer was, "Yes, sir." The five following questions and answers were: "Q. And your proposition was to give him a good process for softening the leather, was it?—A. Certainly. Q. And did you tell him, upon any of those occasions, to heat the liquor?—A. I can't tell you; I don't remember. I presume I did. I did. Q. Do you remember giving him some directions?—A. Yes, sir. Q. And you intended to give him correct ones?—A. Yes, sir. Q. But whether you told him to use the liquor warm or cold you don't remember?—A. No, sir; I don't remember."

Q. Was this question put to Henry Hull on that trial, "Where were those you saw Adam Quackenbush do?" and, if so, please give his answer and the following four questions and answers.

(Objected to by defendants' counsel.)

A. It was. This answer was, "That was done in my shop."

361 The four following questions and answers were: "Q. Did he do them, or did you?—A. Well, we done them together. Q. When was that?—A. That was in 1865, I think. Q. How many dozen were there?—A. Ten, I think, or fifteen. Q. How did you do these?—A. Well, we done five dozen of them in fat liquor and five dozen with soft soap, and soda and oil mixed in, for to see which would be the best five dozen."

Plaintiff's counsel now asks witness to read from the evidence of Samuel Dodge on the trial at Utica from and including the question, on his direct examination, "How long have used fat liquor in Gloversville and Johnstown upon bark-tanned sheep and lamb skins to make them soft and pliable," through to and including this question and answer, to wit: "Q. Simply makes a little more fat liquor?—A. Yes, sir," together with his cross-examination down to the question, "Did you do any in 1869?"

(To this defendants' counsel objects.

(It is here stipulated that such evidence may be printed in the case, following the redirect examination of this witness, as a part of the evi-

dence, with the same force and effect as though read by this witness from his transcript, under defendants' objection aforesaid.)

From printed case referred to.

Q. How long have you used fat liquor in Gloversville and Johnstown upon bark-tanned sheep and lamb skins to make them soft and pliable?

A. Twenty-three years.

Q. Will you state whether or not that kind of leather, prepared in that way from bark-tanned sheep and lamb skins, has been used by the manufacturers for the making of gloves for twenty-three years?

A. They have.

Q. Various manufacturers?

A. Yes, sir.

Q. What has been done with the gloves?

A. Sold, I suppose. I never went to market with them myself; they sold them, of course, or they wouldn't manufacture them.

Q. How have you applied this fat liquor as to temperature?

A. Sometimes warm and sometimes cold.

Q. How long ago did you apply it warm?

A. From twenty-two to twenty-three years ago.

Q. And how have you put it on the skins?

A. Sometimes I have put it on with a brush; sometimes dipped them in; sometimes I have trod it in with my feet.

Q. How early did you dip skins in the fat liquor?

A. From twenty-two to twenty-three years ago.

Q. What portion of the skins are dipped generally, the heavy or light ones?

A. Well, it don't make much difference.

Q. What is the object of sometimes warming the fat liquor?

362 A. So that it will strike through quicker.

Q. Which makes the best leather, in your judgment, cold or warm fat liquor?

A. Well, I can make just as good with warm as I can with cold, but if you boil the liquor, then you destroy the properties of it; because, if you boil it and take it off, and let it get cold, the lye and the oil will separate; the oil comes to the top.

Q. Can it be used in that state very well?

A. It can be used, but it will cause the skin to be spotted; you can use it, but it won't give a clear article.

Q. If it is boiled, and the oil separates from the alkali, can it be mixed again?

A. Not to make the same quality that it was before. I have tried it.

Q. What is the effect of it?

A. It makes the skins spotted.

Q. These skins that have been shown you here, that have been made soft—those of both parties—are they an ordinary quality of skins or are they fair samples?

A. They are fair samples; that is all.

Q. Do I understand that for the past twenty-two or twenty-three years, by the use of fat liquor, you have made skins as soft as those?

A. I have.

Q. And for the purpose of making gloves?

A. Yes, sir.

Q. For the manufacturers of gloves in that vicinity?

A. Yes, sir.

Q. Many?
A. Yes, sir.
Q. State whether or not, during your residence in that town, it has been generally used.
(Objected to.)
Q. Can you state how generally it has been used, if at all, upon other leather than bark-tanned sheep-skins for the manufacture of gloves?
A. We use it on skins that are scoured too clean.
Q. In what condition is the skin left if it is scoured too clean?
A. It is drawn up, stiff, hard, horny-like.
Q. In the condition which is called "tight" or "flat?"
A. Yes, sir; then they put on more fat liquor to make it soft.
Q. State what manufacturers that you know have used this fat liquor.
A. All the mills. If the leather is sent back to them because they have got too much out, it is put in again.
Q. Did you ever apply anything except fat liquor?
A. Yes, sir.
Q. That is, did you put in any other ingredients?
A. Yes sir.
Q. What?
A. Different things.
Q. Did you ever put soap in?
A. I have used soap.
Q. Did you put it in the fat liquor?
I have.
Q. For what purpose?
A. If I am short of fat liquor, I get the soap and dissolve it in boiling water, heat it up, and add it to the fat liquor, and then put in more water to finish the work that I have got to do.
Q. That is, you make more fat liquor?
A. Yes, sir.
Q. Do you put in sal soda sometimes?
A. If there is not enough lye in it I add sal soda.
Q. How about salt?
A. That I don't want to use.
Q. The sal soda and soap you use simply to make a little more fat liquor?
A. That is all.
363 Q. As this fat liquor comes from the mill is it uniform as to strength?
A. No, sir.
Q. How do you ascertain whether it is of a quality fit to use?
A. That is the knack of those who use it. I taste it.
Q. If you find it too weak, in your judgment, how do you strenthen it?
A. Soap and sal-soda.
Q. Suppose it is too strong, how do you weaken it?
A. With water.
Q. When you apply the sal-soda and soap, do you know whether you have the same ingredients that there was in the fat liquor before you applied those articles?
A. The same.
Q. Simply makes a little more fat liquor?
A. Yes, sir.

Cross-examination:

Q. Where did you first use fat liquor in this country?

A. Johnstown.

Q. In whose employment were you?

A. Jonathan Ricketts'.

Q. When did you commence with Jonathan Ricketts and when did you leave?

A. About twenty-three years ago this month I went with Jonathan Ricketts, and I was with him five years.

Q. Did you work at bark-tanned skins all the time that you were with him?

A. No, sir.

Q. What proportion of the time?

A. I can't tell you precisely that. Sometimes I worked at bark-tanned, and sometimes on oil-leather, and sometimes on kid-leather.

Q. Give us the proportion of the time, as near as you can, that you worked at bark-tanned skins.

A. I can't give any idea.

Q. Was it half the time?

A. No, sir.

Q. One-third?

Q. No, sir.

Q. One-fourth?

A. No, sir.

Q. Was it an eighth?

A. I can't tell you, as I said before; I don't believe it was an eighth of the time.

Q. Then you mean that occasionally during the time you did some bark-tans?

A. Yes, sir.

Q. Are you able to tell the number of dozens?

A. No, sir.

Q. Well, during this time that you did the bark-tanned skins did you use any other process than that of fat liquor?

A. Yes, sir.

Q. What?

A. Well, I used fat liquor with it, but I used eggs, and so forth.

Q. What do you include under "and so forth?"

A. Well, that is something of my own.

Q. I would like to know what it is?

A. I don't choose to tell.

Q. Did you use that something in connection with the fat liquor?

A. I did.

Q. And also in connection with the eggs?

A. Sometimes.

Q. Did you sometimes use it with fat liquor without the eggs?

A. No, sir.

Q. Did you sometimes use that process of yours that you won't tell about alone?

A. No, sir.

Q. You always used it with the eggs?

A. Either eggs or fat liquor.

Q. I asked you a moment ago if you used it with fat liquor and without eggs?

A. I told you I used it with fat liquor and eggs?

Q. I ask you if you used it with fat liquor without eggs?

A. No, sir.

364 Q. Did you use it with the eggs without fat liquor?
A. Yes, sir.
Q. Sometimes you used your process with the eggs, and sometimes you used it with fat liquor and eggs?
A. Yes, sir.
Q. Will you tell the jury what proportion of the time that you worked at bark-tanned skins you did use your process?
A. I cannot.
Q. Give the best idea you can about it.
A. I can't tell you; sometimes I used it and sometimes I didn't; I can't tell how often.
Q. Can't give any idea?
A. No, sir.
Q. You sometimes dipped the skins in the liquor, I understand you to say, and sometimes you brushed it on?
A. Yes, sir.
Q. Sometimes you used it cold and sometimes you warmed it?
A. Yes, sir.
Q. Can you give the jury any idea of what proportion of the time you used it cold and what proportion warm?
A. No, sir.
Q. Can you tell what seasons of the year you used it cold?
A. Yes, sir.
Q. What seasons?
A. In the summer-time.
Q. And when did you use it warm?
A. In the winter-time.
Q. Did you sometimes mix water with the fat liquor?
A. Yes, sir.
Q. And sometimes did not?
A. I always did.
Q. Always mixed water with it?
A. Yes, sir.
Q. You never used the clear fat liquor without reducing it with water?
A. Not without the fat liquor was as weak as I wanted it.
Q. I mean the ordinary fat liquor, as it runs at the mills; did you usually weaken that with water, or use it as it was?
A. It was my practice to weaken it.
Q. Is the egg process more expensive?
A. Yes, sir.
Q. Considerably more?
A. Well, yes.
Q. You left there, you say, in about five years?
A. Yes; I was about five years in his employment.
Q. And you have given us the best idea you can as to the proportion of time you used fat liquor?
A. Yes, sir.
Q. Where did you go from there?
A. Gloversville.
Q. Who did you work for there?
A. Went into business for myself.
Q. How soon after leaving Mr. Ricketts' employ did you use fat liquor again?
A. Well, the week after I went there I used it.
Q. Who for?
A. Mr. Churchill.

Q. On what did you use it?
A. On bark-tan.
Q. Alone, or with other things?
A. Well, used it alone and with other things, too.
Q. Which the most?
A. Well, the most I used was fat liquor alone.
Q. In what condition?
A. Weakened down.
Q. Applied warm or cold?
A. Sometimes warm and sometimes cold.
Q. Confining your attention to that one job of Churchill's, did you use it warm or cold?
A. Sometimes warm and sometimes cold.
Q. How many did you do for Churchill?
A. Probably I done over a thousand skins for him; I can't tell now; I could tell if I was home.
Q. Can you tell whether it was five hundred or a thousand?
A. No, sir.
365 Q. Can you swear positively that you used the liquor there for Churchill, hot or cold?
A. I used it warm and cold both on that job.
Q. How much of the *it*me did you use it warm and how much cold?
A. I can't state.
Q. Did you reduce it in that case all the time?
A. I reduced it, sir.
Q. Whether hot or cold?
A. Whether hot or cold.
Q. Did you use it in connection with eggs on that job?
A. No, sir.
Q. Did you put in your secret process there?
A. I did.
Q. In the Churchill job?
A. Yes, sir.
Q. When was the next lot you did?
A. I kept on working at it more or less all the time.
Q. Who next did you do it for?
A. I can't tell you who the next was.
Q. Who is the next that you remember?
A. I done some for Mr. Gilchrist; that is the next that I remember now.
Q. How long after the first job was that?
A. I couldn't tell you; I consider it right along.
Q. My question is, how long after the Churchill job was it that you did Mr. Gilchrist's?
A. It was all one time. I worked right along, sometimes as Churchill's and sometimes at Gilchrist's, and sometimes at Judson's; the work was mixed up; probably one day I would be working on one man's work and another day on another.
Q. Did you work for anybody else at the time you worked for Churchill, except Gilchrist?
A. Yes, sir.
Q. Who?
A. Mr. Judson.
Q. How long did that continue?
A. I kept on with that work two or three years, more or less?
Q. Which, two or three?

A. Well, for nearly three years.

Q. And do you apply what you have said about Churchill's to the others?

A. Yes, sir.

Q. And all the time you used your secret process?

A. No, not all the time; part of the time I did and part of the time I didn't. I can't tell you how much of the time.

Q. Did you generally use your secret process or not?

A. I used it when I thought it was needed.

Q. My question is whether you did so in a majority of instances?

A. No, I didn't.

Q. Did you do it half the time?

A. No.

Q. A quarter of the time.

A. Probably I might.

Q. Well, you continued it for nearly three years, you think; did you stop using fat liquor then?

A. The work fell off. I stopped using it when I hadn't any work.

Q. How long did you stop using it?

A. Probably three or four or five years that I didn't use it at all.

Q. Neither fat liquor nor your secret process?

A. No, sir; none of it.

Q. When did you first resume it after that, and who for?

A. Well, I believe the next lot was a lot I done for Mr. Nickerson.

Q. When was that?

A. That was somewhere in the neighborhood of twelve years ago.

Q. How many did you do then?

A. About twenty-five or thirty dozen, I think.

Q. How did you fix those?

A. With fat liquor alone.

Q. Hot or cold.

A. Warm.

366 Q. All of them?

A. All of them.

Q. Did you use your secret process there?

A. No, sir.

Q. Use any eggs there?

A. No, sir.

Q. Used nothing but fat liquor?

A. Nothing, sir.

Q. Did you reduce your fat liquor?

A. Yes, sir; I did.

Q. When was the next?

A. I didn't do any more for some length of time again; took it in in small lots as it come; sometimes they would come in and I would do them, and sometimes they wouldn't come in; I can't tell when.

Q. Are you able to give anywhere near the time when you next resumed it?

A. I am not.

Q. You say this of Nickerson's was about twelve years ago?

A. Yes, sir.

Q. Well, was it five years after that when you began again?

A. Probably not so long; I can't tell anything about it.

Q. What is the first lot that you remember after that?

A. I can't tell you.

Q. Do you remember any lot that you fixed after that?

A. I know that I done some, but who for I can't tell you. I have done some for Mr. Judson since that, but what time I can't tell.

Q. About how many years intervened between the lot you did for Nickerson until you commenced again for somebody else, as near as you can tell?

A. Oh, some years we had some, and some years we didn't; there isn't a year but what I have had some; but I can't tell who it was for.

Q. My question is whether you can name any person or swear to any lot that you did after Nickerson's for several years?

A. Well, I did some for Mr. Judson; it might be several years after.

Q. Well, was it several years?

A. Probably it was; from Nickerson's down to Judson's I might have had little lots all the while.

Q. Did you or did you not do any after Nickerson's for several years?

A. I did.

Q. Who for?

A. Mr. Judson.

Q. How long after?

A. It might be two or three years.

Q. And might be more?

A. Yes, sir.

Q. But you can't tell anything about it?

A. No, sir.

Q. Have you recently worked at it?

A. Yes, sir.

Q. Considerably?

A. Not very much.

Q. Well, has there been considerable done at it in Gloversville for the last two or three years?

A. I don't know. I don't go anywhere to see.

Q. You can't tell, then, whether there has or not?

A. No, sir.

Q. Have you done anything at it for the last two or three years?

A. I have done some.

Q. To what extent?

A. Oh, not much.

Q. How many dozen did you do last year?

A. Probably I might do a hundred dozen.

Q. Have you done any since January, 1871?

A. I have.

Q. About how many dozen?

A. Oh, probably 100 or 150 dozen.

On his further cross-examination by defendants' counsel, the witness further testified as follows:

367 Q. Referring to the following question asked you on your redirect examination, to wit: "Was Uriel Case, the witness, asked at Utica, in substance, the effect of fat liquor in his experience upon bark-tanned sheep and lamb skins; and, if so, did he in reply, or anywhere in his evidence, mention the removing of the squeak?" please give the three questions and answers of said witness, Case, commencing with the question, "What effect did it have?"

(Objected to by plaintiff's counsel.)

A. "Q. What effect did it have?—A. Made them soft. Q. Suitable for gloves?—A. Yes, sir. Q. Like these you see here?—A. Yes, sir."

2d redirect examination:

On his further redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. Please give the four questions and answers of the witness, Case, following the three just given by you.

(Objected to by defendants' counsel.)

A. "Q. Did you make them into gloves?—A. Yes, sir. Q. What did you do with the gloves?—A. Sold them. Q. Have you made any since?—A. Yes, sir. Q. How long after the first?—A. I didn't make any more till last year"

Q. Was this question put to him on the cross-examination: "You never tried it again until last year?" and, if so, give his answer, and the five questions and answers following.

(Objected to by defendants' counsel.)

A. It was, and his answer was, "I don't know as I did; I don't remember whether I did or not." The five following questions and answers were: "Q Well, last year there was a great deal of it done in Gloversville, I suppose?—A. Some considerable. Q. You say you made those into gloves twenty years ago?—A. Yes, and some into mittens. Q. Did you sell them yourself?—A. Yes, sir. Q. It was a cheaper article than buckskin if it would do, wasn't it?—A. Yes, sir. Q. But you never tried that again till 1870?—A. No, sir."

2d recross examination:

On his further recross-examination by defendants' counsel the witness further testified as follows:

Q. Please proceed from the last answer of the witness, Case, given by you, and give the three following questions and answers of said witness.

(Objected to by plaintiff's counsel.)

A. "Q. And last year they were making a very saleable article out of this bark-tanned leather, were they not?—A. I don't know that
368 they were making a more saleable article than they had before; I sold what I made. Q. Answer my question. Were they making a saleable article out of these cheap bark-tanned skins?—A. We bought them cheaper. Q. Can you give me any reason why you did not try the experiment again during the twenty years?—A. Well, the demand in my trade probably didn't require it."

On his further redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Now please give the five questions and answers immediately following these just given by you.

(Objected to by defendants' counsel.)

A. "Q. Were you present at the other trial?—A. I was. Q. And you remember that the fact came out there that in the latter part of 1869 and 1870 there was suddenly a great trade in these bark-tanned softened leather gloves? (Objected to as immaterial, and overruled.) Q. Is it true that on the other trial it was argued and talked about in your hearing that there was a large trade in gloves made from bark-tanned skins in 1870?—A. It was talked of there. Q. Have you heard it talked of at home how that could be explained?—A. I don't know that I have particularly. Q. You began last year to make them again, you say?—A. Yes, sir."

CHARLES G. TINSLEY.

Subscribed and sworn this 13th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JOHN E. SMITH, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

I reside now in Norwood, Mass.; my age is 42; my business is tanning, manufacturing, and finishing skins. This place, now known as Norwood, was formerly known as South Dedham. The firm-name of our firm now is Lyman Smith's Sons, formerly Lyman Smith & Sons. We manufacture sheep and lamb skins for rollers, book-binding, and linings. I refer to cotton-factory rollers for cotton-spinning. William H. Monroe was in the employ of our firm; I cannot state how many years. He commenced when he was a boy; worked there I should think for about ten years.

Q. While he was with you, were you in the same business?

A. We were.

Q. State whether the sheep and lamb skins manufactured by you in your business during that time were bark-tanned.

A. They were.

369 *A.* Please state how you prepared them after the bark-tanning for cotton-spinning rolls.

(Objected to by defendants' counsel.)

A. We allowed the shavers one pound of soap to one hundred skins, for the purpose of shaving them. After they are shaved, there is a thin coat of oil put on the grain, and put out on a stone table, as hard as they can put them out on the table. They go through the operation of putting out twice; not the oil twice. They are then tacked out on a board to dry. Then, after they are dry, they are taken down and finished, simply hand-glassed, that is the smoothing of the surface. They are then ready for use.

Q. Please state how and for what purpose the soap was used?

A. The soap was dissolved in hot water, which made a solution. The skins were put in, and remained three minutes, perhaps. They were ready to shave after they were taken out. This was done for the purpose of shaving them.

Q. During Mr. Monroe's time with you, was there any other process or ingredient used to prepare them for shaving?

A. Not that I know of.

What kind of oil was used for the surface after the shaving? How, and for what purpose, was it used?

(Objected to by defendants' counsel.)

A. Fish-oil; it was put on to the grain of the skin with a swab, for the purpose of laying the grain down smooth and fine, and it takes the harshness out of the skin, and gives it more finish, and makes it mellow.

Q. Do you refer to the grain-surface of the skin?

A. Yes, sir.

Q. Please describe a little more particularly this process of putting out, as you term it.

A. The idea of "putting out" is to get every particle of stretch out of the skin. The one-half the skin at a time is laid out on a marble table. A man stands over that table with a sharp iron slicker and puts all the strength on the skin in applying the slicker that the skin will admit of.

Q. Was there any fat liquor used on or about the skins in any stage of their preparation for rolls?

(Objected to by defendants' counsel.)

A. There was none.

Q. Was there any process or ingredient used in or about them in their preparation for rolls, for the purpose of taking the squeak out of the leather?

(Objected to by defendants' counsel.)

A. Not that I was aware of.

Q. Please state, if you are able, whether, when these skins were prepared for rolls, as you have stated, the squeak was in fact taken out.

(Objected to by defendants' counsel.)

370 A. That is something I don't notice much about, because it is not material in our business, as they only want it firm; makes no question as to whether the leather squeaks or not.

Q. Have you seen leather said to have been prepared according to the Russell process for gloves?

(Objected to by defendants' counsel.)

A. I have.

(Plaintiff's exhibit No. 1 is here shown witness.)

Q. Please state whether the skins shown you would be suitable for cotton-spinning rolls, such as were prepared by you in your business, while Monroe was with you.

(Objected to by defendants' counsel.)

A. I should say this skin was ruined for any such purpose, not fit for it; nothing like it was ever finished or dressed in our factory or business.

Q. Please state the difference between the skin now shown you and those prepared by you for cotton rolls, while Monroe was with you.

(Objected to by defendants' counsel.)

A. This skin is altogether too loose and spongy, and our idea was to get the skin out firm and solid. We could not make this skin stay on a cotton-roll.

Q. Please produce and exhibit for identification a bark-tanned sheep or lamb skin prepared by you for rolls.

(Objected to by defendants' counsel.)

(Witness here produced a skin stamped "L. Smith and Sons, manufacturers, South Dedham, Mass., extra lamb," and further marked by examiner "Plaintiff's exhibit No. 8, J. W., examiner.")

Q. Please state whether this skin was prepared by you, or in your business, from the bark-tanned state, for cotton-spinning rolls, and whether it is or is not a fair specimen of the leather produced by you, for such purpose, while Monroe was with you.

(Objected to by defendants' counsel.)

A. It was; I should judge it was a fair specimen of the leather produced by us for such purpose while Monroe was with us.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. State as near as you are able how many years Monroe was in the employ of your firm, and of other persons in Mass., to your knowledge.

A. I think it was about ten years he was employed by our firm, but would not be positive; may be more than that, and may be less; I could not tell how long he was in the employ of other persons in Massachusetts. He was jobbing around so, I couldn't tell how long he did stop at any place.

Q. A number of years, do you think?

371 A. I shouldn't think it was years in other places, but it might be.

Subscribed and sworn this 13th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JOHN E. SMITH, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

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A. We were.

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Q. Please state how and for what purpose the soap was used?

A. The soap was dissolved in hot water, which made a solution. The skins were put in, and remained three minutes, perhaps. They were ready to shave after they were taken out. This was done for the purpose of shaving them.

Q. During Mr. Monroe's time with you, was there any other process or ingredient used to prepare them for shaving?

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What kind of oil was used for the surface after the shaving? How, and for what purpose, was it used?

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A. Yes, sir.

Q. Please describe a little more particularly this process of putting out, as you term it.

A. The idea of "putting out" is to get every particle of stretch out of the skin. The one-half the skin at a time is laid out on a marble table. A man stands over that table with a sharp iron slicker and puts all the strength on the skin in applying the slicker that the skin will admit of.

Q. Was there any fat liquor used on or about the skins in any stage of their preparation for rolls?

(Objected to by defendants' counsel.)

A. There was none.

Q. Was there any process or ingredient used in or about them in their preparation for rolls, for the purpose of taking the squeak out of the leather?

(Objected to by defendants' counsel.)

A. Not that I was aware of.

Q. Please state, if you are able, whether, when these skins were prepared for rolls, as you have stated, the squeak was in fact taken out.

(Objected to by defendants' counsel.)

370 A. That is something I don't notice much about, because it is not material in our business, as they only want it firm; makes no question as to whether the leather squeaks or not.

Q. Have you seen leather said to have been prepared according to the Russell process for gloves?

(Objected to by defendants' counsel.)

A. I have.

(Plaintiff's exhibit No. 1 is here shown witness.)

Q. Please state whether the skins shown you would be suitable for cotton-spinning rolls, such as were prepared by you in your business, while Monroe was with you.

(Objected to by defendants' counsel.)

A. I should say this skin was ruined for any such purpose, not fit for it; nothing like it was ever finished or dressed in our factory or business.

Q. Please state the difference between the skin now shown you and those prepared by you for cotton rolls, while Monroe was with you.

(Objected to by defendants' counsel.)

A. This skin is altogether too loose and spongy, and our idea was to get the skin out firm and solid. We could not make this skin stay on a cotton-roll.

Q. Please produce and exhibit for identification a bark-tanned sheep or lamb skin prepared by you for rolls.

(Objected to by defendants' counsel.)

(Witness here produced a skin stamped "L. Smith and Sons, manufacturers, South Dedham, Mass., extra lamb," and further marked by examiner "Plaintiff's exhibit No. 8, J. W., examiner.")

Q. Please state whether this skin was prepared by you, or in your business, from the bark-tanned state, for cotton-spinning rolls, and whether it is or is not a fair specimen of the leather produced by you, for such purpose, while Monroe was with you.

(Objected to by defendants' counsel.)

A. It was; I should judge it was a fair specimen of the leather produced by us for such purpose while Monroe was with us.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. State as near as you are able how many years Monroe was in the employ of your firm, and of other persons in Mass., to your knowledge.

A. I think it was about ten years he was employed by our firm, but would not be positive; may be more than that, and may be less; I could not tell how long he was in the employ of other persons in Massachusetts. He was jobbing around so, I couldn't tell how long he did stop at any place.

Q. A number of years, do you think?

371 A. I shouldn't think it was years in other places, but it might be.

Q. Can you state the time with any degree of certainty that Monroe work'd at other places in your vicinity?

A. I don't know as I can with any certainty.

Q. When in the employ of your firm, did he work at any particular branch or branches of the business? and, if so, state particularly what.

A. He did; worked at shaving the flesh off.

Q. Are we to understand you as testifying that he worked at nothing else while in your employ except shaving?

A. He did work at other things, but his specialty was shaving.

Q. Can you state whether or not Monroe, when in your employ, prepared liquor in which to immerse the skins to prepare them for shaving, and whether or not he did immerse them to prepare them for shaving?

A. I presume likely he done it; but it was done mostly by other parties. If he made the liquor, he probably immersed them.

Q. State, as far as you have personal knowledge, how the liquor was prepared for immersing the skins prior to shaving them, and of what ingredients composed, and the manner of immersing the skins.

A. It was simply hot water and soap. The skins were wet down with it, put into a tub, were left in just long enough to wet them, that is all. Left in just a moment, dip them right in and taken out again.

Q. I understood you to state on your direct examination that they were left in about three minutes. Did you so state?

A. I might have said so; I might not; I don't know. Is nothing essential about it. There is no necessity of their remaining in more than a moment.

Q. Are you able to state positively whether Monroe, while in the employ of your firm, did or did not use other preparations prepared by him than water and soap for treatment of bark-tanned sheep and lamb skins in preparing them for shaving?

A. I can only say he did not, with our consent, and he did not on our leather.

Q. While in your employ, did he work altogether on your leather, or on leather for other people also?

A. I think he worked altogether on our leather.

Q. Can you speak positively whether he did or did not?

A. I am very certain he did not.

Q. Did your firm get out leather for cotton-rolls for other people while he was in your employ?

A. We got them out for sale.

Q. Were you present so that you are able to state how and with what the liquor was prepared in each instance for treating the skins for shaving?

A. I was not present, but we weigh the soap out, so we know just what each man does; he has to come up to the office after it.

Q. How much, if any part of your time, while Monroe was in your employ, did you spend where you could observe the preparation of
372 the liquor, and the manner of treating the skins?

A. Well, most every day, some parts of the day, while I was at home.

Q. How much, and what part of the day when you were at home, and what part of the time during the ten years Monroe was in your employ, were you at home?

A. It would be difficult to say positively about that; but when Monroe, but not particularly Monroe, but any of the hands got out of a job, they came to me for it. A job would usually last from three days to six.

I couldn't tell what part of the time I was at home. I have no idea. I can't state the time with any accuracy at all.

Q. Did you spend a portion of those years of your time at your store in Boston, and, if so, what portion? And whether, during a part of those years, you were absent in Europe, and, if so, how long?

A. I did spend from half past 8 in the morning to half past three in the afternoon, two days in each week, at our store in Boston. I was not absent in Europe during any part of those years.

Q. State the condition of the skins got out by you for cotton-rolls, while Monroe was in your employ, after they were shaved, as to their being soft or otherwise, before they were what you term "put out."

A. They were harder then than they are now.

Q. Was there what is called a "gum" used on these skins?

A. Yes, sir; on the finish.

Q. State, if you know, of what that was composed.

A. Gum arabic; sometimes different gums.

Q. Are you able to state positively whether or not Monroe sometimes used oil and alkali instead of soap and water, as a preparation for preparing skins for shaving?

A. I am not aware of his using anything of the kind.

Q. Will you swear positively that he did not?

A. No; I will not swear positively, what he did; he might have done it while I was in bed asleep.

Q. Can you state positively whether he did or did not use alkali and oil in preparing skins for shaving, when you were not present, and not abed or asleep?

A. I can say he had no authority whatever to do it.

(Question repeated.)

A. I don't think he used. It ain't at all probable.

(Question again repeated.)

A. I can state positively, I think, because the leather by using an alkali makes it too soft and too spongy.

(Question again repeated.)

(Objected to by plaintiff's counsel.)

A. I should say he didn't do it.

Q. Positively?

(Objected to by plaintiff's counsel.)

A. I won't say positively.

Q. What do you mean to be understood would injure the leather, the alkali or the oil?

A. Too much of either.

Q. Suppose just enough of each were put together to make soap and applied in that state, would it injure the leather then?

A. No, sir.

373 Q. Then a mixture of alkali and oil would not injure the leather, unless the proportion of either the alkali or oil was too great to form soap, would it?

A. That is soap; alkali and oil is soap; it would not injure the leather if you make soap of it.

(Plaintiff's exhibit No. 7 was here shown the witness, and the following questions asked him:)

Q. Is, or is not, that skin, plaintiff's Exhibit 7 a fair average of bark-tanned lamb-skins in the bark-tanned state, as to quality?

A. I should think it was.

Q. Can you state whether or not you tanned that skin?

A. It looks like our leather; I think we did.

(Plaintiff's exhibit No. 8 was here handed to the witness, and the following questions asked:)

Q. State, if you are able, how that skin while in the bark-tanned state compared with plaintiff's exhibit No. 7, as to quality.

A. I should judge there was not a great deal of difference as to the quality.

Q. If any difference in quality, state the difference.

A. I see no difference in it.

Q. Are you able to state whether or not, if the skins, plaintiff's exhibit No. 8, were staked as skins are in preparing them for gloves, it would be as soft and pliable as plaintiff's exhibit No. one, examined by you on your direct?

A. No, it would not be; you could not make it so by simply staking it.

Q. Have you had any experience in preparing bark-tanned sheep and lamb skins or other skins for gloves?

A. I have.

Q. What?

A. Some bark-tanned and some alum-dressed skins.

Q. When?

A. Cannot state the time exactly; some five, or six, or seven years ago. I have no date. I could tell if I were at home, just the time.

Q. Where?

A. At our manufactory at Norwood, formerly South Dedham.

Q. Please state how you treated the bark-tans for gloves five, or six, or seven years ago.

(Objected to by plaintiff's counsel.)

A. We took them after they were shaved and dried out, and wet them, or sort of dampened them a little, and staked them; that is all.

Q. Dampened them with what?

A. With water.

Q. How had you prepared these for shaving, the same as you stated?

A. Yes, sir.

On his redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. Will you please produce for exhibit and identification another skin in character and quality to plaintiff's exhibit No. 8, which is prepared by you from bank-tanned sheep or lamb skins for cotton-spinning rolls?

A. I will.

(Witness produced skin, marked "Plaintiff's Exhibit No. 9, J. W., examiner.")

374 Q. Please state whether this skin so produced is or is not, in its character and quality, substantially like Exhibit No. 8, and whether it was or was not prepared by you for cotton-spinning rolls.

(Objected to by defendants' counsel.)

A. Is similar to Exhibit No. 8; I should think it was substantially like it, and it was prepared by us for cotton-spinning rolls.

(Plaintiff's exhibit No. 6 is shown witness, and the following questions asked:)

Q. Please state whether that skin is or is not a fair average of bark-tanned sheep-skins in the bark-tanned state as to quality.

(Objected to by defendants' counsel.)

A. I think it was not a fair average, not quite as good as a fair average.

Q. In your business do you tan the sheep and lamb skins from the raw; and if so, how long have you done so?

(Objected to by defendants' counsel.)

A. We do, and have done so ever since we commenced business.

Q. Please state whether Monroe, while in your employ, prepared the skins for shaving that he shaved, or were they prepared by others?

(Objected to by defendants' counsel.)

A. Mostly by others.

Q. Did he furnish materials for the preparation of skins for shaving, while in your employment?

(Objected to by defendants' counsel.)

A. He did not.

Q. In answering, on your cross-examination, as to the condition of the skin in regard to being soft or otherwise, after shaving and before being put out, did you mean that they were harder then than after being finished; if not, what did you mean?

A. I alluded to previous tanning, some years ago; about the hardness of the skin. Improvements in tanning have been made since.

Q. State, if you are able, what the effect of fat liquor applied to bark-tanned sheep and lamb skins would be while in process of preparation for cotton-spinning rolls.

(Objected to by defendants' counsel.)

A. It would render them soft, spongy, and unfit for rolls, and would make the rolls fluting. The porous matter would draw the cotton out, so that you could not twist the thread, and would render it entirely worthless for rolls.

Q. Please state, if you are able, how the price of bark-tanned sheep and lamb skins, in the bark-tanned state, now compare with their price in 1869 and a few years prior thereto.

(Objected to by defendants' counsel.)

375 A. I should think they were worth nearly from one-third to two-thirds more now than they were a few years ago; four or five years ago.

Q. Are you now, and have you been, familiar with the market-value of bark-tanned skins in the bark-tanned state for a good many years?

A. I have.

On his further cross-examination by defendants' counsel the witness further testified as follows:

Q. Did you ever treat bark-tanned sheep or lamb skins with fat liquor?

A. I have.

Q. When, where, and how?

A. At our place of business, probably two weeks ago, by heating the fat liquor up and immersing them in. Heated not so hot as to burn the skin—just hot enough so it would not burn the skin. Put them in the fat liquor, hung them out and froze them out, then perched.

Q. How many did you treat?

A. I guess there were about ten dozen.

Q. Did you use anything but fat liquor on them?

A. I did not.

Q. Where did you get the fat liquor?

A. I sent to Gloversville for it.

Q. To whom did you send?

A. To N. C. Russell and Co.

Q. How long did you leave the skins in the liquor?

A. I should think from three to five minutes.
Q. Did you immerse them more than once?
A. I did not.
Q. State if you observed the effect produced by the application of fat liquor upon these skins, as you have stated, as to making them soft and removing the squeak from them.
A. I did observe the softness and elasticity, and suppleness of the leather; took the squeak out. I observe that they were very elastic, and would make very good glove-leather.
Q. Did you heat the liquor at any time to a point of heat beyond what would allow you to work in it with your hands?
A. I think I did.
Q. Did you to a point that would scald the skin, so you would not dare to put the skins in?
A. I did, so I did not dare to put the skins in until it cooled.
Q. At whose request and for what purpose did you treat these?
A. At my own request and for the purpose of testing some Indian dressed tan stock.
Q. Any other purpose?
A. No, sir.

JOHN E. SMITH.

Taken, subscribed, and sworn this 15th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

GEORGE W. GILLETTE, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

376 I am 33 years of age, and reside in Gloversville, in this county. I am a manufacturer of gloves and mittens. I have been familiar with the business of glove-manufacturing ever since I can remember. I have during that time been familiar with the various kinds of gloves manufactured, and the kinds of leather used for that purpose.
Q. State whether or not you are familiar with the leather used by Russell, this plaintiff, for the manufacture of gloves made from bark-tanned sheep and lamb skins, said to be prepared according to his patent.
(Objected to by defendants' counsel.)
A. I am.
Q. State whether you prepare such leather from bark-tanned sheep and lamb skins and manufacture the same into gloves in your business.
A. I do.
Q. Have you seen or read the Russell patent?
A. I have.
Q. State whether you prepare your leather substantially according to that process.
(Objected to by defendants' counsel.)
A. I do.
Q. Please state about what the expense per dozen skins is, for thus preparing the leather, and how much, if at all, it improves the skins per dozen in value.
(Objected to by defendants' counsel.)
A. It cost me last season just 22 cents a dozen. I should call the cost from 20 to 25 cents per dozen for labor or material. I should say it improved the leather at the least calculation $2 a dozen.

Q. Assuming cost of preparation to be as you have stated, how would the leather, when thus prepared, compare in quality, value, and suitableness for gloves with other stock or materials of the same cost used for the purpose in Gloversville and vicinity?

(Objected to by defendants' counsel.)

A. I think that the cost of preparing them is much cheaper than other stock of the same value prepared in any other way. I think the stock is quite or more suitable for gloves than any other stock costing substantially the same thing. I think that the stock is more valuable than any other stock costing substantially the same.

Q. How will the profit on this kind of leather, when made into gloves, compare with the profit on leather of the same cost used for the purpose in Gloversville and vicinity?

(Objected to by defendants' counsel.)

A. I think the profit is very much more and the percentage very much more than on any other leather costing substantially the same that I know of.

Q. State whether or not you have ever seen or known any leather made from bark-tanned sheep or lamb skins of the character and
377 quality of this made by the Russell process in Gloversville and vicinity or elsewhere until about the date of Russell's patent.

(Objected to by defendants' counsel.)

A. I should say I had not until about that time.

Q. Please state whether or not, in 1868, you consulted and experimented with these defendants, Samuel Dodge, sen., and Samuel Dodge, jun., at their shop in Gloversville, in regard to some method of softening bark-tanned sheep and lamb skins and taking out the squeak, and preparing them for mittens and gloves; and, if so, state the facts in regard to it.

(Objected to by defendants' counsel.)

A. In 1867 or 1868 I did. In company with Mr. Combs I experimented with them and consulted with them. Mr. William Combs and myself went to Mr. Dodge's kid-shop and consulted with them about the propriety of putting oat-meal on to bark tans, and a composition of lard-oil, yolks of eggs, and soap, and we did apply these ingredients to our skins there.

Q. If in your consultations and treatment with them, the subject or purpose of treating the skins was talked about, please state what that was.

(Objected to by defendants' counsel.)

A. The object was to kill the squeak and make the leather soft and pliable for glove purposes, and this treatment was the result of the consultation. This manner of putting them through was talked about, and they advised it, and we did it.

Q. Please state whether that did take out the squeak.

(Objected to by defendants' counsel.)

A. It did not.

Q. State whether either of the defendants mentioned or suggested to you the use of fat liquor for that purpose.

(Objected to by defendants' counsel.)

A. They did not to my recollection.

Q. Please state whether you purchased bark-tanned sheep and lamb skins of William H. Monroe, of Gloversville; and, if so, when first?

(Objected to by defendants' counsel.)

A. I did. In 1865 first; in the fall of 1865. I continued buying of

him in 1866, 1867, 1868. I think I did in 1869, and I think I have nearly every year since until the past year.

Q. Please state whether or not Monroe gave you at any time any directions for treating those skins, or skins of that class, so as to soften them and prepare them for mittens and gloves; and, if so, about when first, and what were those directions?

(Objected to by defendants' counsel.)

A. He did, and first in the fall of 1865. His directions were
378 these: his first instructions, take a pail of fat liquor, dissolve half a pound of castile soap by heating, to which Mr. Monroe added some salt, and something else—I don't remember what it was—which he applied with me, and showed me how to do it; I did some of them with him; he dampened them down for staking on the grain side. We applied this with a rubber, as he termed it. It was a piece of canvass matting. These were dampened in this and staked out, but it did not make leather or kill the squeak. The composition was thick and gummy, about the consistency of soft soap. I should have added that I added a pint or half a pint of neat's-foot oil; that was a part of his directions; that was one of the ingredients. This was added at the time I heated the liquor and put in the soap.

Q. What portion of these ingredients were heated, and for what purpose, according to his directions?

(Objected to by defendants' counsel.)

A. The fat liquor, castile soap, and neat's-foot oil were heated by his directions for the purpose of dissolving the soap and cutting the oil?

Q. State whether he directed the liquor or composition when prepared to be applied to the skins warm, and whether it was so applied.

(Objected to by defendants' counsel.)

A. He did not direct it to be applied warm. A few of the first skins we dampened when the liquor was warm, but the greater portion of it we used cold; it lasted some few days. This was done with him at his shop.

Q. Please state whether he subsequently gave you any other or further direction in regard to the treatment of bark-tanned sheep and lamb skins; and, if so, when and what?

(Objected to by defendants' counsel.)

A. He did. In the years 1866 and 1867 I think, and I think also in 1868. I think the next direction he gave me was to take alum and dissolve it in water—I don't remember how much alum—immerse the skin in it and hang it up and dry it; that was the process; that is what he told me to do. He also told me to use eggs, neat's-foot oil. I don't remember the proportion now. He also told me to use fat liquor and water, one-half fat liquor and one-half water, or one-third fat liquor and two-thirds water; can't tell exactly which. He also told me to immerse them in water, with a little salt added, and hang them out and dry them. He also told me to use extract of tannin, but I don't remember what the proportion was or how he told me to use it. He also gave me some composition, which he called stuffing, to put on the skins; I don't know what that was made of; it was about the consistency of soft soap; he was using it on kid-skins at the time he gave it to me. I don't remember of any other definite receipts.

379 Q. Were these several modes of treatment given you by him at different times during these years spoken of by you?

(Objected to by defendants' counsel.)

A. They were, and I am confident that he gave me one of these in the spring of 1869.

Q. Please state in brief the result of these various experiments?
(Objected to by the defendants' counsel.)
A. None of them were satisfactory or produced the desired effect. It did not kill the squeak or make the leather as soft as desired for glove purposes.
Q. Did he ever instruct you to apply the fat liquor to the skins warm?
(Objected to by defendants' counsel.)
A. He did not.
Q. State whether at any time you worked for Uriel Case in the manufacture of mittens and gloves; and, if so, when and where.
(Objected to by defendants' counsel.)
A. I did, I think in the year 1851 or 1852, in his shop in Gloversville.
Q. State whether since that time you have lived near him and had any opportunities of knowing his business and the material used and gloves made by him; and, if so, how near, and what opportunities.
(Objected to by defendants' counsel.)
A. I lived for years within one lot of him, on the same block. My shop was built very near to his in 1866. I frequently went into his shop to borrow tools, and had errands back and forth, and I have frequently been in his shop several times every year since 1866.
Q. State whether during the year you worked for him, or at any other time until the date of Russell's patent, you saw him using any leather of this class or description prepared by Russell's process, or saw any such, or gloves or mittens made from such leather, in his possession, or on his premises.
(Objected to by defendants' counsel.)
A. I have not that I remember.
Q. Please state whether the squeak in the leather is preceptible when it is thoroughly wet?
A. It is not.
Q. State whether, while it is in a wet state, it can be determined whether it will or will not be soft, or the squeak out when it becomes dry?
(Objected to by defendants' counsel.)
A. It cannot.
Q. In treating bark-tanned sheep and lamb skins by the Russell process, about how long is the skin subjected to the fat liquor?
(Objected to by defendants' counsel.)
A. About ten minutes.
Q. State the effect of allowing the skin to remain too long in the fat liquor.
(Objected to by defendants' counsel.)
A. It becomes spotted and streaked.
380 Q. About how long a time does it require to produce this last effect just spoken of?
(Objected to by defendants' counsel.)
A. If the skins are kept stirring they will not become spotted or streaked as soon as if they were allowed to remain still. I think they would spot in twenty minutes or half an hour if they were not stirred.
Q. What would the effect be upon the skin if immersed in warm fat liquor and allowed to remain therein overnight?
(Objected to by defendants' counsel.)
A. I think the skins would be streaked where folded in the folds and spotted in the flanks and open parts of the skins.
Q. State whether this would or would not be injurious to the leather for glove purposes.

(Objected to by defendants' counsel.)

A. It would be injurious.

Q. To what extent injurious?

(Objected to by defendants' counsel.)

A. It would be considerable of a damage to them.

Q. What is this process and its object, known as "dampening" down, to which you referred in answer to a previous question?

(Objected to by defendants' counsel.)

A. The process is to rub on the face or flesh side of the skin water or other material that you wish to dampen the skin with, fold it up and pack it away in a box or barrel until sufficiently dampened, until it has struck through evenly, then it is sufficiently dampened; and the object is to get it in good condition to stake.

Q. State whether that process is generally applied to all skins before staking, and to those treated by the Russell patent as well as others.

(Objected to by defendants' counsel.)

A. It is.

Q. State whether or not it is used for the purpose, or does in fact take the squeak out of leather that contains squeak?

(Objected to by defendants' counsel.)

A. Bark-tanned skins may be dampened sufficiently to take out the squeak. That is not the object in dampening bark-tanned skins.

Q. State whether or not, as skins are usually dampened in the business for the purpose of staking, it does or does not take out the squeak?

(Objected to by defendants' counsel.)

A. It does not.

Q. Please state whether the effect of the Russell process is or is not the same, substantially, upon sheep as upon lamb skins?

(Objected to by defendants' counsel.)

A. It is.

381 Q. Please state whether bark-tanned sheep-skins treated by the Russell process are or are not suitable for what is known as dog-skin gloves?

(Objected to by defendants' counsel.)

A. They are.

Q. Will you state whether or not, for the last ten years, gloves made from various kinds of leather other than bark-tanned sheep and lamb skins have been sold in the market as dog-skin gloves?

(Objected to by defendants' counsel.)

A. Not to my knowledge.

Q. State, if you are able, which would cost the most, to tan a sheep-skin from the raw, in oil or fat liquor, and thus prepare it for gloves, or to first tan the skin in bark and then subject it to the Russell process and thus fit it for gloves?

(Objected to by defendants' counsel.)

A. I think the Russell process would be the cheaper by four to six shillings a dozen.

Q. Please state which, if you know, is worth the most when made into gloves, at the same cost of making the glove?

(Objected to by defendants' counsel.)

A. The Russell dog-skin glove is worth the most. I mean gloves made from a bark-tanned skin redressed in fat liquor is worth the most, sells for the most.

Q. How much the most?

(Objected to by defendants' counsel.)

A. From $2 to $4 per dozen gloves.

Q. Please state the difference in the cost of the leather for a dozen of gloves made from the oil-tanned and the bark-tanned supplemented by the Russell patent?

(Objected to by defendants' counsel.)

A. I think that the actual cost of the leather in the skins—there is not much difference per dozen of gloves in the skin.

On his cross-examination by defendants' counsel, witness testified as follows:

Q. How long have you been a manufacturer of mittens and gloves?

A. For the past ten years, with the exception of one year or one season.

Q. What was your business before that?

A. I studied law for two years and a half preceding that.

Q. Where, and with whom did you read law?

A. At Johnstown, and with Horace E. Smith.

Q. Horace E. Smith, the plaintiff's attorney?

A. I understand so.

Q. Were you admitted to practice?

A. I was.

Q. Did you engage in the practice of law, and, if so, how long did you continue in practice more or less, and where?

A. I did, about one year, a little less than a year; at Tipton, Cedar County, Iowa.

Q. How long have you lived in Gloversville?

382 A. Since 1848, with the exception of the time I have spoken of as being away.

Q. Since this case has been pending, have you conversed with the plaintiff in regard to what you could testify to, and in regard to the case, and, if so, how frequently, and what?

A. I have not conversed with the plaintiff in regard to what I could swear to, but have conversed with him on one or two occasions about the case. I conversed with him at his shop once, and at my shop I think once or twice, perhaps three times.

Q. If, before you appeared here as a witness in this case, you stated to any person or persons what you could testify to, or furnished any person or persons with a statement or memoranda of what you could testify to, or related to any person what you could testify to, who reduced such statement to writ ng, or made a memoranda thereof? Name the person or persons, the time, and the place.

A. In relation to this case I think I made a statement a few days ago to Mr. Horace E. Smith. I did not make a written memoranda of it; it was an oral statement. I do not know whether he reduced it to writing or not. It was at Mr. Russell's shop, within two weeks.

Q. Who, if any persons, were present on that occasion at Russell's shop?

A. Mr. Russell was in the room once or twice and staid a portion of the time; Mr. John Fulton was present a portion of the time. I think Mr. Solomon Jeffers came while I was conversing with Mr. Smith; and I think Mr. Samuel Richardson came in while I was conversing. Mr. Lewis P. Johnson was present a portion of the time; I don't remember any others that were present. Mr. Fanning, a glove-buyer from New York, was there a portion of the time.

Q. State how long John Fulton was present on that occasion, and whether or not he took part in the conversation there being had in regard to your testimony on this case.

A. I cannot state how long he was there; it was a few minutes. I don't know what he said about the case.

Q. State whether or not, within the past two or three years, you have taken part in discussions relative to Russell's patent for the treatment of bark-tanned sheep and lamb skins, and the litigations had in regard thereto between Russell and Isaac V. Place, and between Russell and other persons, and in regard to the merits of said patent, and the right of other parties to treat bark-tanned skins with fat liquor; and, if so, which side did you advocate?

(Objected to by plaintiff's counsel.)

A. I have frequently, and have generally, if not on every occasion, advocated against the patent.

Q. Were these public discussions?

A. Yes, they were public discussions, wherever I happened to
383 meet anybody discussing the question.

Q. State whether or not you have manufactured mittens and gloves extensively or othewise, and how extensively?

A. I have not manufactured extensively; have manufactured from 2 to 3,000 dozens a year.

Q. What do you understand the Russell process, as you call it, for treating bark-tanned skins to be? State particularly.

A. The application of fat liquor with a portion of salt, sal-soda, and soap dissolved in it and heat to or near boiling-point, and when sufficiently cooled, applied with a brush or by immersion as the case may be.

Q. How long have you been treating bark-tanned sheep and lamb skins by what you call the Russell process?

A. Since the time of the date of the commencement of this suit and one commenced against Isaac V. Place and John W. Place. I went down on that day and made an arrangement with Mr. Russell about it.

Q. State the arrangement you made with Russell.

(Objected to by plaintiff's counsel.)

A. I was to pay him 50 cents a dozen at that time, as a royalty for using his process; that was the first arrangement.

Q. If you made any subsequent arrangement, state it.

(Objected to by plaintiff's counsel.)

A. Since then I have arranged to pay him $1.00 a dozen.

Q. Have you paid him anything, or has he demanded any pay from you?

(Objected to by plaintiff's counsel.)

A. I have not paid him anything, and he has not demanded anything of me.

Q. Was any time of payment fixed by your arrangements?

(Objected to by plaintiff's counsel.)

A. No, sir.

Q. About how many dozen have you treated since the first arrangement mentioned by you with Russell?

(Objected to by plaintiff's counsel.)

A. It is 241 dozens.

Q. Referring to your answer on the direct stating the cost of treating skins by what you call the Russell process to be 20 or 25 cents per dozen, state particularly what items of materials and labor you considered in giving such cost, and the amount allowed by you for each.

A. I estimated the actual cost for help in hanging out the skin to sun; the actual cost of the fat liquor, soap, sal-soda, and salt used; the actual amount of time taken by myself and hands in doing the work;

the cost of carting skins to the mill and from the mill. I estimated the probable cost of use of mill and firewood. I cannot now remember the cost of each item in the estimate.

Q. Do you include in this cost the staking of the skins?

A. I do not.

384 Q. How much is it worth per dozen to stake the skins? State, if you know.

(Objected to by plaintiff's counsel.)

A. It is according to the kind of skins and the amount of work done upon them.

Q. I mean bark-tanned sheep and lamb skins.

(Objected to by plaintiff's counsel.)

A. It is worth at least $1.00 a hundred to stake them well.

Q. Do you know anything about the cost of tanning sheep and lamb skins in bark?

A. I have been informed what it is worth; I have no other knowledge than that.

Q. Informed by whom?

A. By Mr. John Smith, of Lyman Smith & Sons, of South Dedham; Mr. Lewis P. Johnson of Gloversville; and Mr. Burt, of Ogdensburgh, a tanner.

Q. How long have you known and fully understood the different modes and processes in use in Gloversville and vicinity for doing what you term dampening down skins for staking?

A I have known of dampening skins since I was 9 years old. I worked at it then. I do not know that I know now of all the different processes of dampening down.

Q. Do you know of any now that you have not fully understood for at least ten years?

A. Yes, sir.

Q. State them.

A. I learned one day last week of the use of flax-seed and soap for dampening down kid-skins. I never heard of that before.

Q. Is that the only one that you know of, or ever heard of, that you haven't fully understood for at l'ast ten years?

(Objected to by plaintiff's counsel.)

A. In 1865 Mr. Monroe gave me a process for dampening down bark-tanned, that I didn't know of before. I don't remember of any other.

Q. If you purchased any bark-tanned sheep or lamb skins of William H. Monroe, in the year 1865 or since that time, state as nearly as you can the number purchased of him in each year, and the kind, whether sheep or lamb skins.

A. As near as I can remember I first purchased about 37 dozen of lamb and sheep skins of him in 1865. I think I purchased of him in the fall, later than that, another lot probably upwards of 50 dozen; they were mostly sheep-skins shaved. In January or February, 1866, I made a purchase of him of sheep-skins, I don't remember how many. I presume that I bought in 1866 at least 100 dozen of him; I haven't any doubt of it. These were sheep and lamb. I bought some of him in 1867. I should think 100 dozen that year. I think I didn't buy more than 50 dozen of him in 1868. I think in 1869 I bought but one little lot of him, not over 25 dozen.

Q. What kind of goods did you make from these skins purchased from Monroe?

385 A. Nearly all of them into lined gauntlets and ined button-tops.

Q. Did you make them up in the bark-tanned state, or did you treat them to make them soft and suitable for gloves?

A. I treated and had others treat them for me, all of them.

Q. During each of these years?

A. I treated them myself in 1865, in 1866, in 1867, and 1868. In 1869 I had quite a large quantity treated for me by Christie & Allen, kid-dressers.

Q. With what and how did you treat them in 1865?

A. With the process that Mr. Monroe first gave me, and with the stuffing that he stuffed his kid-skins with. I don't remember any other than those two that year. I treated them with fat liquor, neat's-foot oil, soap, salt, and something else that I don't remember, by dampening them on the face of the skin. I also dampened the face of the skin with stuffing that Mr. Monroe used for putting on kid-skins; I don't know what it was.

Q. Did you apply the fat liquor, oil, soap, salt, and the something else, and also the stuffing, to the same skins or to different ones?

A. To different skins. I didn't put both on the same skins.

Q. Did Monroe mix and prepare the process used by you in 1865, composed of fat liquor, &c., as stated by you in every instance that you used it, or did you prepare it sometimes yourself?

A. The first time it was used he added salt and the something else, I having mixed it and heated it and gave up to that; after that I prepared the fat liquor and the soap, and the neat's foot oil, and used it in that way without the other ingredients.

Q. Did this fat-liquor process applied by you in 1865, as you have stated, make the skins soft in any degree; and, if so, how soft?

(Objected to by plaintiff's counsel.)

A. It did; but didn't make them sufficiently soft for the purpose I wanted to use them for, and did not kill the squeak. It improved them, but it didn't improve them enough.

Q. What effect did it have upon the squeak?

A. It did not destroy the squeak.

Q. Did it have any effect upon the squeak, and did it lessen it in any degree?

A. It did have. It lessened it to a slight degree.

Q. For what purpose did you apply this fat-liquor process stated by you to bark-tanned skins in 1865?

A. To soften the skin and to kill the squeak.

Q. And this process was given to you by Monroe, was it?

A. It was.

Q. Did you ask him for a process to soften this skin and remove the squeak, or did he volunteer to give it to you?

A. I do not remember which. It was talked about, and that was the result.

Q. It was understood then by Monroe and you that it was to
386 soften the skin and remove the squeak, was it?

A. It was.

Q. And it had that effect in a degree, did it?

(Objected to by plaintiff's counsel.)

A. It did.

Q. Did you, in 1865, use fat liquor alone on bark-tanned sheep and lamb skins, for the purpose of making them soft and removing the squeak; and if so, how did you prepare it and how apply it?

A. I do not remember of using fat liquor alone in 1865.

Q. Will you swear that you did not?

A. No, sir; I will not.

Q. About how many dozen pair of gloves did you make in 1865 from bark-tanned sheep and lamb skins, treated in the manner you have stated by the fat-liquor process given to you by Monroe in that year?

(Objected to by plaintiff's counsel on the ground that it does not appear that any such process as named in the question was given by Monroe.)

A. I presume about one hundred dozen.

Q. Did you sell them?

A. I did.

Q. How and with what did you treat the bark-tanned sheep and lamb skins manufactured by you into mittens and gloves in the year 1863?

A. I treated some with yolks of eggs and water, beat it up and dampened them on the grain-side. I treated some, I think, with salt and water. I do not remember how I used fat liquor, or whether I used any that season or not.

Q. What kind of skins were those you treated in 1866 with eggs and water and salt and water?

A. They were bark-tanned sheep and lamb skins.

Q. How and with what did you treat the bark-tanned sheep and lamb skins manufactured by you into gloves in 1867?

A. I think I treated some by immersion in fat liquor and water. I treated some with fish-oil such as we have used for milling purposes, cut with soap. I think I also applied to these skins more or less egg-yolks and water when dampening them down to stake.

Q. How many did you treat in 1867, by immersing them in fat liquor and water mixed, and how was the fat liquor prepared?

A. There were but a few dozens; I think less than twenty. Mr. Monroe prepared the fat liquor and water by putting some water and some fat liquor into a tub and thoroughly saturating the skins with the liquor. Mr. Combs and myself then went on and put through the balance as Mr. Monroe had directed, as he came down and showed us how. Mr. Combs and I put through the balance by immersing them in the fat liquor and water, and hanging them out to dry just as Mr. Monroe had done.

Q. What effect did this treatment have upon these skins as to rendering them soft and removing the squeak?

A. It made them softer than they were before, and somewhat removed the squeak.

387 Q. Were they immersed more than once in this liquor?

A. They were not.

Q. What time in the year were these skins treated, and was the liquor applied in a warm or a cold state?

A. I think it was in April or in May; it was in the early part of the season, and the fat liquor was applied cold.

Q. Did you make these skins into gloves and sell the gloves?

A. We did.

Q. How did you treat the bark-tanned sheep and lamb skins, manufactured by you into gloves, in 1868?

A. Some of them with fat liquor cold and some with fat liquor cold reduced with water; some with soap and fish-oil, such as used in oil-dressing skins, and rain-water; some with egg-yolks, lard-oil, sal-soda, rain-water mixed, which I simply dampened the skins with. I think it was that year that I went up to Mr. Dodge's and put through some with oatmeal and the process I have spoken of. I don't remember what other processes I used; I presume I did use others.

Q. How many did you treat with fat liquor as stated by you in 1868?
A. I can't tell how many.
Q. State as near as you can.
A. Probably from 25 to 50 dozen.
Q. How did you apply the fat liquor to these?
A. Some I rubbed the fat liquor on the face of them on a table, and some I immersed.
Q. Did you apply the liquor in a cold or a warm state?
A. I think it was in a cold state; I don't remember having heat my liquor at all.
Q. What season of the year was it?
A. I don't remember, but I think it was the first part of the season from March to June.
Q. What effect did the application of the fat liquor to these have, as to rendering them soft and removing the squeak?
A. They were somewhat improved in softness, and the squeak was somewhat removed.
Q. How long were the skins that you immersed in fat liquor or fat liquor and water, on the several occasions mentioned by you, left in the liquor?
A. Until they were thoroughly saturated; probably about ten minutes; it might be longer than that; I might say twenty.
Q. You put none of these skins in the second time, did you?
A. I think I did.
Q. When, and how many?
A. During the first part of the season of 1868, and I don't remember how many; I'd have to guess at it; I remember one batch distinctly.
Q. What effect did the second immersion have upon these as to rendering them soft and removing the squeak?
A. I do not remember. We discontinued it. I do not remember what the effect was.
Q. Were the bark-tanned sheep and lamb skins used by you during these years shaved, or were they full-substance skins?
A. They were all shaved.

388 Q. Why did you use the yolks of eggs and water on some of these skins as you have stated, and how did you come to use them? (Objected to by plaintiff's counsel.)

Q. I used it on the skins to improve them and to dampen them. I came to know of this process because I had used it on calf-skin kid to dampen them.
Q. Then you used this process only to dampen the skins?
A. Yes, sir, only to dampen the skins.
Q. Did you use the egg and water process to dampen the skins that you had treated with fat liquor?
A. I think I did.
Q. Why did you use salt and water on some of these skins, and how did you come to use that?
A. I used it because Mr. Monroe told me it would improve them.
Q. When Monroe gave you the fat-liquor process in 1865, as you have stated, did he tell you it would improve the skins as to making them soft and removing the squeak?
A. He did, substantially.
Q. You asked him for a process that would improve the skins in those regards, did you not?
A. I think I did. That was our object; I think I did.
Q. For how many years prior to the time you went to Dodge's and

treated some skins with oatmeal, etc., as you have stated, had you used fat liquor for the purpose of softening bark-tanned sheep and lamb skins?

A. I think I had used it every year after, and including 1865 and up to that time, to some extent every year, more or less, I think.

Q. And you never used it for that purpose before Monroe told you to use it, as you have stated, in 1865; did you?

A. I did not.

Q. When you went to Dodge's shop in 1868, as you have stated, who, if any person, went with you?

A. William H. Combs went with me on both occasions.

Q. State when these occasions were, as near as you remember.

A. It was in the summer and in warm weather, and the occasions were within a day or two of each other; it might be more than a day or two.

Q. Did you see Samuel Dodge, sen., there on either of those occasions?

A. I did, on both occasions.

Q. State what conversation you had with the Dodges, or either of them; state the conversation had on each occasion separately and with which one.

A. I cannot attempt to state anything more than the substance of it; I cannot remember.

Q. Can you state the substance of it from memory?

A. Substantially the whole of it I can.

Q. Please state it as nearly as you can in the order in which it occurred, stating each separately.

A. The first that I can remember of saying to Mr. Dodge is that I had a receipt from a gentleman that used to work with him and knew him well, from South Dedham. I read them the receipt; they were both there, and then asked them their opinion of it. I am confident
389 that Mr. Dodge, sen., approved of the using of oatmeal. I remember that it was agreed upon that we should come there a certain day when we could use their wheel that they run skins in a drum. I know there was a conversation between us all about getting of them some yolks of eggs and lard-oil. I think we did not get the soap of them. They told us to get that down street. I think that was the substance of the first conversation. We then, on the day they had selected for our coming, went there, and Samuel Dodge, jr., mixed the egg-yolks, soap, and lard-oil, heated and dissolved it under his own care, and Mr. Samuel Dodge, sen., took the skins from the oatmeal process and threw them in the drum. I don't know that I can repeat anything special that was said, only that we talked of it and did it. The substance of the conversation was that they approved of the receipt that I had, and we went on and put the skins through according to their direction, as they advised us to. I can't recall anything further of the conversation.

Q. Please state the conversation, or the substance of it, if you can do so from memory, had with the Dodges, on the first occasion of your going to their shop with Combs, as you have stated, in 1868.

(Objected to by plaintiff's counsel.)

A. I remember telling Mr. Dodge, sen., in substance, that I had met an old friend of his down in South Dedham; that he had given us a receipt for putting through bark-tans. Mr. Dodge said he knew the man; he remembered him. I then read to him that part of the receipt pertaining to the use of oatmeal. I remember that he said he knew of it being used before. They said that we could have the drum on a certain day. I don't know which one of them. I know that they said that we could have the egg-yolks and the oil of them there, and could mix it there. I

know that they approved of our using that receipt. That is all that I can remember of the first conversation.

Q. State the second conversation or the substance of it.

(Objected to by plaintiff's counsel.)

A. I cannot now recall any special conversation had the second time. I remember Samuel Dodge, jr., requested me to watch the egg-yolks and oil and soap while he went out of the room, and to stir it up when it commenced to boil. I don't remember anything else that was said to recall it now on that occasion.

Q. Do you mean to say that the eggs used there were boiled?

A. No, sir; I do not.

Q. Were these skins treated according to the receipt you took to Dodge's?

A. I think they were, substantially.

Q. Then all that Dodges had to do with your treatment of those skins was to furnish you with some eggs and oil and permit you to use
390 their drum, and to allow you to treat the skins there, was it?

A. No, sir.

Q. How otherwise, as you say the skins were treated according to the receipt you took to Dodge's?

A. Because we wanted their opinion of it. If it was a good one, we would use it; if it was not, we would not. We went for their opinion.

Q. Have you, on your cross-examination, stated all the conversation, or the substance of all of it, had with the Dodges, or either of them, on the occasions referred to by you at their shop, that you now remember? and if not, state what more was said.

A. I think I have.

Q. State, if you know, the average cost of oil-dressing sheep and lamb skins for mittens and gloves per dozen during the time you have been engaged in manufacturing.

A. I should think it would average from ten to eleven shillings.

Q. What kind or kinds of goods have you manufactured from bark-tanned sheep and lamb skins, treated by what you call the Russell process?

A. Lined and unlined button-tops and gauntlets.

Q. State the average price brought by each kind in the market during the time you have made them.

A. From $6.50 to $8 for the button-tops; from $9 to $12 for the gauntlets. There were two qualities of each kind.

Q. State particularly what you mean by two qualities of each kind, and whether there were two qualities of both the lined and unlined goods; and, if so, what made them of different qualities?

A. I mean No. 1 and No. 2 goods in quality, as we sort them there. There were number 1 and two in quality to each kind, both the lined and unlined. Imperfections in the gloves, either in the stock or making, made them of different qualities.

Q. State whether or not each batch or lot of bark-tanned skins treated by you with what you call the Russell process did or did not, after such treatment, contain skins of different qualities; and if so, how different?

A. They did. Some skins would be better than others in quality; some would be softer than others some would leather better than others.

Q. What do you mean by your answer, "Some would leather better than others?"

A. Some skins would be of a better quality than others; different kinds of sheep would make different kinds of leather, and different tan-

ning would make a difference in the leather. Skins taken from slaughtered lambs and sheep would be better than those taken from sheep and lambs that were not slaughtered.

Q. Did you make more than two qualities of gloves of each kind of the gloves made by you from these skins?

A. I think I did not.

Q. In treating skins with fat liquor, state whether or not you ever left the skins in such liquor over night?

A. I did.

Q. When, where, and how many skins?

391 A. In 1868, in our factory in Gloversville, and from 50 to 75 skins.

Q. Anything mixed with this fat liquor; if so, what?

A. I don't positively remember.

Q. What did you do with these skins?

A. I took them from the liquor in the morning, hung them up, and dried them.

Q. Did you make them into gloves and sell the gloves?

A. I did.

Q. While in the liquor were they stirred, or were they simply thrown in the liquor and allowed to lie there until morning?

A. They were thrown in the liquor, covered up, a weight put on to keep them in the liquor, and left until morning.

Q. Were they thrown into the liquor in a folded or ruffled state, or otherwise?

A. In a ruffled state.

Q. Then, the liquor would not reach all parts of the skins alike, would it?

A. It would not.

Q. Were these skins rendered soft by the application of the liquor?

A. Somewhat so.

Q. Since you commenced treating skins by what you call the Russell process, have you ever used fat liquor alone upon such skins, or have you used it in each instance in connection with some other ingredient or ingredients; and, if so, what ingredients?

A. I have always used it in connection with soap, sal-soda, and salt.

Q. Do you weigh or measure the fat liquor or either of the other ingredients when preparing the liquor, or do you put them together haphazard; and, if so, how, and in what manner do you determine when the liquor is in a proper state for use?

(Objected to by plaintiff's counsel.)

A. I substantially weigh or measure the fat liquor and other ingredients. I determine by the taste of the fat liquor whether there is sufficient salt in it, and determine by the color of the skin when saturated when there is enough sal-soda and soap.

Q. What further do you do with the skins by way of treatment in the cases where you discover, after they have been immersed in the liquor, that the liquor contained too much or too little either of the sal-soda or soap?

A. When the liquor does not contain sufficient sal-soda and soap, I add to it until it contains the desired quantity, until it works right. When it contains too much sal-soda and soap, I reduce it by adding fat liquor.

Q. Then, in the instances mentioned in your two preceding answers, after having once immersed the skins in the liquor and discovered from the color of the skins after immersion that the liquor contained too much

know that they approved of our using that receipt. That is all that I can remember of the first conversation.

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A. Somewhat so.

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A. I have always used it in connection with soap, sal-soda, and salt.

Q. Do you weigh or measure the fat liquor or either of the other ingredients when preparing the liquor, or do you put them together haphazard; and, if so, how, and in what manner do you determine when the liquor is in a proper state for use?

(Objected to by plaintiff's counsel.)

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Q. What further do you do with the skins by way of treatment in the cases where you discover, after they have been immersed in the liquor, that the liquor contained too much or too little either of the sal-soda or soap?

A. When the liquor does not contain sufficient sal-soda and soap, I add to it until it contains the desired quantity, until it works right. When it contains too much sal-soda and soap, I reduce it by adding fat liquor.

Q. Then, in the instances mentioned in your two preceding answers, after having once immersed the skins in the liquor and discovered from the color of the skins after immersion that the liquor contained too much

or too little of the sal-soda and soap, or either, do you then change the character of the composition by putting in more soap or sal-soda as you think it requires in the one case, and in the other by putting in more fat liquor, and do you then immerse the skins again in the liqu'r after having so changed it, or do you leave these skins as first immersed,
392 and change the liquor in the particulars mentioned for treatment of the next or subsequent batches of skins?

(Objected to by plaintiff's counsel.)

A. I do, to the first part of it. To the first part of that question I tone the liquor up to get it to the desired proportiou. I do not again immerse the same skins in that liquor, the same skins once immersed, but take other skins of the same batch.

Q. Then do I understand you as testifying that you can only tell whether the liquor when prepared contains too much or too little of some one or more of the ingredients used by inspecting the color of the skin after treatment?

(Objected to by plaintiff's counsel.)

A. I can tell after drying the skin, by putting it out and drying it. I can tell that way also.

Q. Can you tell in any other way; and, if so, what way?

A. I cannot.

Q. How frequently has it occurred in your use of what you call the Russell process, that you have found it necessary after preparing the liquor and immersing the skins, and inspecting their color, to change the character of the liquor by adding more soap or sal-soda, o rboth, or by adding more fat liquor, as stated by you?

A. I have no idea. I have no recollection how many times.

Q. Has it occurred frequently, or otherwise?

A. I don't know whether it has or not.

Q. What do you mean to be understood by your answer on cross-examination, that in preparing the liquor for the treatment of skins that you "substantially weigh or measure the different ingredients?"

A. I usually put three pails of fat liquor into a kettle, after heating it, add sufficient salt to be discovered by tasting. I add, as near as I can judge from the quantity, a quarter of a pound of sal-soda, not weighing it, and I put in substantially a pint of soft soap.

Q. And then, after having immersed the skins in this so prepared, and seeing their color after immersion, you sometimes find or deem it necessary to change the mixture by adding thereto more sal-soda or soap, one or both, or by adding more fat liquor, do you?

(Objected to by plaintiff's counsel.)

A. I do.

Q. Do you vary the quantity of these several ingredients in preparing the liquor according to the quality, character, or heft of the skin you desire to treat?

A. I do in regard to the quality and character of the skins, but I do not in regard to the heft of the skin.

Q. How vary it relative to the character and quality of the skin?

A. As the case requires.

Q Can you not state more specifically?

A. Some skins require a little different treatment from others; some tannage differ from others.

393 Q. Do you use more or less sal-soda and soap in the liquor in a good quality skin than on skins of inferior quality?

A. I think I use less sal-soda and soap, probably, on a first-quality good skin than I do on a poorer one.

Q. Does the addition of sal-soda and soap to the fat liquor strengthen the liquor?

A. I think it does. It does.

Q. Does a good-quality skin take the liquor more readily than a skin of inferior quality?

A. It does.

Q. And does a skin of inferior quality require a longer time in the liquor? And, if so, how much longer?

A. A skin that is inferior in quality by being a dead skin will require longer in the liquor; probably five minutes longer. I couldn't tell exactly.

On his redirect examination by plaintiff's counsel witness testified as follows:

Q. Prior to your studying law were you familiar with the manufacturing business?

A. I was.

Q. Were you subpœnaed, sworn, and examined as a witness for defendant in a suit between this plaintiff and Isaac V. and John W. Place for an infringement of this patent, tried at Albany, in October, 1870?

A. I was.

Q. State whether you made any statement or communications to Mr. Smith, referred to on your cross-examination in reference to this case, or your testimony therein, except to answer certain questions which he put to you in relation to the matter.

A. I did not.

Q. Please state whether or not all kinds and classes of skins used for mittens and gloves are staked before cutting up.

A. They are.

Q. You know, do you not, the cost per dozen of bark-tanned sheep and lamb skins in the bark-tanned state?

A. I do substantially.

Q. Please state how the leather made by you from bark-tanned sheep and lamb skins, under and according to Monroe's directions, and otherwise, if you prepared any in any other way prior to 1869, compared with that made by you under the Russell process, in its quality and fitness for gloves.

(Objected to by defendants' counsel.)

A. They were inferior in nearly every instance, if not every one; every instance, I think I can say.

Q. Please state whether in any of those experiments you succeeded in removing the squeak and softening or otherwise preparing them suitable for gloves.

(Objected to by defendants' counsel.)

A. Not so suitable as I desired, or as the Russell process makes them.

Q. Please state whether, after trying the first process given you by Monroe, as you have stated, you communicated to him the result.

(Objected to by defendants' counsel.)

394 A. He was present and saw the result.

Q. Please state, if you remember, whether you communicated to him the result of any of the experiments which he suggested to you for softening or treating the skins,

(Objected to by defendants' counsel.)

A. I did, all of them, unless it were the first and second, which he saw; which were done in his presence.

Q. State whether, in these various experiments where you used fat liquor, you used it in a warm or cold state.

A. At the commencement of the first process I commenced to use it when it was warm; after that I used it when it was cold. I don't remember of using it warm after that, except to put in some other ingredients. I dissolved the soap and oil by heating, and put them into the fat liquor when they were hot.

Q. Please state whether this warming of the other ingredients than the fat liquor, as mentioned, was for the purpose of dissolving them, and whether it was designed at all for warming the fat liquor for its application to the skins.

(Objected to by defendants' counsel.)

A. They were heat for the purpose of dissolving them, and no other.

Q. In those cases where you commenced applying the liquor to the skins while it was yet warm, in the way you have stated, about how long did it remain warm?

A. But for a short time, a few minutes.

Q. And if you continued applying it to the skins after it became cold, state about how long.

A. I continued until I used it up; until I completed the lot of skins I was at, sometimes fifty dozen, sometimes forty, sometimes seventy; sometimes I would commence in the morning and use it all day; it depended on circumstances.

Q. Please state whether, prior to 1869, Monroe gave you any directions to apply the liquor to the skins warm, or whether you did so, except incidentally, as you have stated, in the commencement of its application in some cases where it had been warmed to some extent by the other ingredients mixed with it.

(Objected to by defendants' counsel.)

A. Monroe did not tell me to warm it; it was warmed only as I have stated, to my recollection.

Q. Referring to your cross-examination, where you speak of subjecting some skins the second time to the fat liquor on one occasion, which practice was discontinued, please state whether there is any reason you can assign for having discontinued, if it had made such leather as you were seeking to obtain.

(Objected to by defendants' counsel.)

A. It did not make such leather as I was seeking to obtain, therefore I discontinued it.

395 Q. Referring to your answer on the cross-examination in which you state substantially that when Monroe gave you the process in 1865, mentioned by you, and told you it would improve the skins as to making them soft and removing the squeak, state whether he did or did not tell you the same thing substantially in regard to the other processes which he gave you.

(Objected to by defendants' counsel.)

A. He did, substantially.

Q. Please state whether or not, from all kinds of leather for the manufacture of mittens and gloves in Gloversville and vicinity, there are mittens and gloves of different qualities manufactured.

A. There are.

Q. Referring to your statement on the cross-examination, that you make No. 1 and No. 2 goods in quality from the bark-tanned sheep and lamb skins treated according to the Russell process, according to the quality of the leather or skins, please state whether this depends upon the quality of the skin originally, before subjected to the fat-liquor process, or upon the effect of the fat-liquor treatment.

(Objected to by defendants' counsel.)

A. Upon the quality of the skins.

Q. Referring to your cross-examination where you speak of the skins allowed by you to remain overnight in the fat liquor, being put in in a ruffled state, please state whether or not, in your treatment of skins by the Russell process, they are put into the liquor in a ruffled state.

(Objected to by defendants' counsel.)

A. They are, unless it is applied by a brush on a table. They are when immersed.

Q. Referring to your cross-examination where you speak of varying the proportions of the ingredients to some extent according to the skin, please state whether this variation is considerable or otherwise.

A. I should say it was not.

Q. After preparing a quantity of liquor for the treatment of the skins, and before treatment, please state whether you immerse a lot of skins, or first try the liquor with one skin, or a part of a skin, before immersing.

(Objected to by defendants' counsel.)

A. I try one skin at a time in preparing my liquor until I get it right, and then put the lot through.

Q. Please state whether, from the reading of plaintiff's specification, you have any difficulty in applying the process therein described so as to produce the leather you have described as made by you from such process.

(Objected to by defendants' counsel.)

A. I have none.

Q. Please state whether or not any person of ordinary skill and experience in the preparation of leather for gloves would be able, without difficulty, from the reading of plaintiff's specification, to apply
396 the process therein described so as to produce substantially such leather as you and Russell produce by it.

(Objected to by defendants' counsel.)

A. I think they would.

(Plaintiff's exhibits Nos. 8 and 9 are here shown witness, and he is asked the following questions:)

Q. Please state whether the squeak is out of those skins or whether they are suitable for gloves?

A. The squeak is not out of them, and they are not suitable for gloves in their present conditions.

Q. Please state whether or not, in your judgment, by staking alone, and without subjecting them to any other process or treatment, the squeak could be removed and they could be rendered suitable for gloves.

(Objected to by defendants' counsel.)

A. The squeak would not be removed, and they would not be suitable for gloves.

Q. Please state whether they are or could be made into such leather as is produced from bark-tanned sheep and lamb skins by the Russell process by staking, and without some other treatment or process.

(Objected to by defendants' counsel.)

A. They are not, and could not.

Recross-examination:

On further cross-examination by defendants' counsel witness testified as follows:

Q. When giving your evidence in the case tried at Albany, in October, 1870, between this plaintiff and Isaac V. Place and John W. Place, referred to by you on your redirect-examination, did you there testify that in your experience in applying fat liquor to bark-tanned sheep and lamb

skins you never saw any difference in effect on the leather whether put on warm or cold?

A. I think I did testify to that; that is my recollection.

Q. And do you now say that you never saw any difference in the effect produced by the liquor to the leather whether applied warm or cold?

(Objected to by plaintiff's counsel.)

A. I do see a difference now; I did not see a difference as I applied it then.

Q. Did you testify on said trial at Albany, in October, 1870, that as early as 1865 you used simple fat liquor on bark-tanned sheep and lamb skins warm, in both ways, by immersing and rubbing on the skins, and that you had used sal-soda, soap, salt, and other ingredients?

(Objected to by plaintiff's counsel.)

A. I don't remember whether I swore I had used it by immersion. I remember swearing that I used it by rubbing on. I think I did
397 there testify that as early as 1865 I used it warm, and have so stated on this trial.

Q. Will you now swear that you did not there testify that as early as 1865 you had used simple fat liquor on such skins, in both ways, by immersing and rubbing it on the skins?

(Objected to by plaintiff's counsel.)

A. I would not swear that I did so testify.

Q. While giving your testimony as a witness in said case at Albany, and after plaintiff's patent was read to you, did you state as follows: "I have used all the ingredients but Venetian red, all the others, since 1865, except sal-soda. Did not use sal-soda until about three years ago, but other alkali instead, soda-ash, or lye?"

(Objected to by plaintiff's counsel.)

A. I think I did so testify.

Q. Did you, as a witness, when giving your testimony on said trial at Albany, state that you had been a manufacturer of gloves and mittens at Gloversville in 1863 and 1864, and since the fall of 1865, and during that fall you used fat liquor in treating skins, and had used it warm and cold, beginning in the fall of 1865?

(Objected to by plaintiff's counsel.)

A. I think I did so testify.

Q. While giving your testimony on said trial at Albany was a sample bark-tanned sheep or lamb skin, said to have been treated by the Russell patent or process, shown to you, and did you, after inspecting such skin, testify as follows, referring to said skin: "I have produced leather of that character by using heated fat liquor, substantially like this. Don't know that I have exactly as good as this, by immersing and by milling it in sufficiently to saturate the skin, or in any way to get it in there?"

(Objected to by plaintiff's counsel.)

A. I don't remember using just those words; I remember using substantially that.

Q. Was the skin there shown you and referred to in the last question substantially like plaintiff's Exhibits No. 1 and No. 2, treated as you say according to what you call the Russell process?

(Objected to by plaintiff's counsel.)

A. It was.

Q. State whether or not in your experience in treating skins by what you call the Russell process, all the skins so treated by you are, after such treatment, alike soft, supple, and suitable for gloves, and the squeak removed to the same extent in all.

A. I think they are all soft except dead or poor skins that could not be softened by any process and made suitable for gloves, but are not all of one quality. The quality depends upon the nature of the skin, and not the application of the process. I think the squeak is sub-
398 stantially removed in all and every instance.

Q. Will you swear that the squeak is entirely removed from all such skins by such treatment in every instance? I mean by what you call the Russell process.

A. I will not.

Q. After heating or warming the liquor for treatment of skins by what you call the Russell process, about how soon after you commence immersing the skins in it does the liquor become cold?

(Objected to by plaintiff's counsel.)

A. I don't allow it to become cold at all. I add warm fat liquor to it to keep it warm all the time.

Q. To keep it in a state as to warmth so that you can work in it comfortably with your naked hands, do you mean?

(Objected to by plaintiff's counsel.)

A. I do.

Q. Referring to plaintiff's Exhibits 8 and 9, please state whether or not, in your judgment, those skins, if immersed in simple fat liquor so as to thoroughly saturate them, would be rendered soft, supple, and suitable for gloves, and the squeak be removed from them?

(Objected to by plaintiff's counsel.)

A. To a certain extent I have no doubt they would.

Q. Assuming the fat liquor to have been heated to a degree so that you could work in it comfortably with your naked hands, and in such state applied, would it, in your judgment, render them supple, soft, and suitable for gloves, and remove the squeak from them?

A. It would render them more soft and supple than if the fat liquor had been applied cold, and would have a greater tendency to remove the squeak, I should judge.

Q. Will you swear that it would not remove the squeak?

A. I will swear that I do not think it would entirely. I would not swear positively that it would not.

Redirect examination:

On his further direct examination by plaintiff's counsel witness testified as follows:

Q. When stating on your examination at Albany that you never saw any difference in the effect upon the leather whether the liquor was put on warm or cold, as you have stated on your recross-examination, were you speaking of your use of it warm prior to 1869, in the manner you have detailed on your examination here?

A. I was.

Q. In connection with your statement on your examination at Albany, that as early as 1865 you used fat liquor on bark-tanned sheep and lamb skins, etc., as mentioned on your recross-examination here, did you say in substance that you had ever since been experimenting?

(Objected to by defendants' counsel.)

A. I did.

Q. Did you in your testimony on the trial at Albany, in con-
399 nection with what you said in regard to the character of the leather produced by you prior to 1869, and as to its being substantially like the sample of plaintiff's shown you, also say in words or

substance, "I might have produced as good leather as this, a few skins in a large lot, but not the whole batch?"

A. I did.

Q. Did you also say in the same connection, in words or in substance, "Before I reached the process I am now using I did not reach a satisfactory result?

A. I did.

Q. Did you also further say in the same connection, "My object in warming was not for putting on warm, but to combine the materials; it would get cold as I used it?"

A. I did.

Q. Referring to your question and answer on the recross-examination, in which you are made to say in substance that you keep the liquor in a state as to warmth so that you can work in it comfortably with your naked hands, do you mean to be understood as testifying that the object in thus keeping it warm was so that you could work in it comfortably with your naked hands; and, if not, what was the object?

A. It was not the object simply so that we could work in it. The liquor worked very much better on the skins after it was warm or when it was warm. It made the leather very much better.

Recross-examination:

On his further cross-examination by defendants' counsel witness testified as follows:

Q. Referring to your last answer, state how better the liquor worked on the skins when it was warm, or had been warmed.

A. It penetrated the skin quicker and more evenly, and saturated the skin more thoroughly.

Q. Anything else?

A. I think it makes better leather of the skin.

Q. Because it penetrates the skin quicker and saturates it more evenly?

(Objected to by plaintiff's counsel.)

A. I do not know, not being a chemist. I know the effect, but don't know why it does so.

Q. While giving your testimony on the trial at Albany was the plaintiff's patent of February, 1870, shown you, and after inspecting it did you testify as follows: "I have seen this before, or similar; the process I use is not the same; I don't use his patent; before I reached the process I am now using I did not reach a satisfactory result?"

(Objected to by plaintiff's counsel.)

A. I think I did swear to that substantially, if not exactly.

Q. State with as much particularity as you are able the process you were then using, and to which you referred in that answer as using.

(Objected to by plaintiff's counsel.)

400 A. I don't want to state the process, as it is something I got up of my own, and is entirely separate from this patent, and if I ever have any occasion I want to use it again.

Q. Then you decline to give it, do you?

A. I do. I will state that it is not fat liquor in any form.

(The defendants' counsel here objects to the last paragraph in the last answer of the witness and insists that the same should be stricken out.

Redirect examination:

On his further direct examination by plaintiff's counsel, witness testied as follows:

Q. In speaking on this point, in giving your testimony at Albany, did

you say in words or substance that you preferred not to give the process or ingredients that you were then using?

(Objected to by defendants' counsel.)

A. I did.

Q. Please state, if you have no objections to doing so, whether fat liquor was a part of that process?

(Objected to by defendants' counsel.)

A. It was not.

GEORGE W. GILLETTE.

Taken, subscribed, and sworn this 17th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

HIRAM T. COLE, a witness produced, sworn, and examined on the part of the plaintiff, testified as follows:

I reside in Gloversville, Fulton County, N. Y. I am 41 years of age. I am a manufacturer of gloves at Gloversville, and have been at it off and on for the last eighteen years. I have been familiar somewhat during that time with the different kinds of materials used and gloves made in Gloversville and vicinity. I know what is called the A. B. Giles barn, which was used for a glove and mitten shop. It is situated between Elm street and Main street, in rear of a house now occupied by Dr. Furbeck. That house now occupied by Furbeck has been occupied by various parties. I think A. B. Giles formerly occupied it, but won't be positive. I occupied that barn as a barn in 1858 and 1859. In 1858 myself and Mr. Williams used it as a barn, and in 1859 we used it as a barn and shop.

Q. State whether a man by the name of Dunson occupied it either of those two years or at any other time, to your knowledge.

(Objected to by defendants' counsel.)

A. He did not.

Plaintiff's exhibits No. 1 and No. 2 shown witness and this question asked him:

401 Q. Please state whether during those two years any leather of this description now shown you, made from bark-tanned sheep or lamb skins, was in or about that barn or shop, to your knowledge.

(Objected to by defendants' counsel.)

A. There was not. Nothing like that.

Q. Was there any there during those years cut up into mittens and gloves in the bark-tanned state, that is, I mean, sheep and lamb skins?

(Objected to by defendants' counsel.)

A. There was bark-tanned sheep and lamb; I couldn't say whether they were sheep or lamb, or both; they were bark-tanned sheep skins, were in the bark-tanned state.

Q. Please state whether, during those two years any time, a man by the name of James Kennedy worked for you, or in that shop or barn.

(Objected to by defendants' counsel.)

A. He did.

Q. Please state whether or not prior to 1869 you ever saw in Gloversville or vicinity, or elsewhere, leather or gloves made from bark-tanned sheep or lamb skins, of the character or quality of Plaintiff's exhibits Nos. 1 and 2, which are now shown you.

(Objected to by defendants' counsel.)

A. I never did.

Cross-examination:

On his cross-examination by defendants' counsel witness testified as follows:

Q. You do not wish to be understood as testifying that you saw all the leather, or different kinds of leather, made into mittens and gloves in Gloversville, prior to 1869, do you?

A. Not at all.

Q. Nor all the gloves, and different kinds thereof, do you?

A. Not at all.

Q. Are you able to state whether or not during the years 1858 and 1859, and since that time, there was in Gloversville a barn known as or called the A. B. Giles's barn, sometimes used as a glove-shop, other than the barn mentioned by you on your direct examination?

A. In order to answer that question, A. B. Giles has owned two barns; a barn that Mr. Giles owned after 1864 had been used previous to that time as a glove-shop, but it never was used for a glove-shop after Mr. Giles owned it, to my knowledge. I think it was torn away shortly after Mr. Giles bought the property.

Q. Where was that barn situated?

A. That barn was situated on Middle street; was then called the Theodore Welch property.

Q. Are you able to state whether or not that was used as a glove & mitten shop in 1858 or 1859; I mean to your own knowledge?

A. I think it was, one or the other of those years by a man by the name of Titcombe, who did some cutting. I couldn't swear positively as to that, but that is my impression.

402 Q. Do you wish to be understood as testifying that there was not in Gloversville, in 1858 and 1859, and since, a barn called the A. B. Giles's barn used as a mitten and glove shop other than the two barns already mentioned by you?

A. There was none to my knowledge.

Q. All you mean to say, then, is that there was none to your knowledge?

A. That is what I mean to say.

Q. Who did James Kennedy work for on the occasion mentioned by you in 1859? State, if you know.

A. He worked for Cole & Williams.

Redirect examination:

On his further direct examination by plaintiff's counsel witness testified as follows:

Q. Please state what opportunities, if any, you had to see and know the kinds and qualities of leather used for gloves in Gloversville and vicinity prior to 1869.

(Objected to by defendants' counsel.)

A. In the first place, we worked different kinds of leather ourselves. I saw leather used by other parties. I had an opportunity generally of examining any leather that was laying around. I didn't go around much into other shops; I generally staid to home attending to my own business.

Q. Were you cutting and manufacturing for yourself or for others?

A. For myself.

Q. State whether you did or did not see the goods of other manufacturers than your own.

(Objected to by defendants' counsel.)

A. I did.

Q. Please state whether this second barn, which you speak of in your cross-examination, was owned or occupied by A. B. Giles in 1858 or 1859.

(Objected to by defendants' counsel.)

A. I don't think it was.

Q. About how long after 1859 was it that A. B. Giles owned or occupied it?

(Objected to by defendants' counsel.)

A. I couldn't swear positively, but I should think it was about from 5 to six years.

Q. If anybody besides Titcombe occupied it for glove and mitten purposes prior to the time Giles took it, state who and when.

A. I have no knowledge of anybody occupying it after Titcombe, but before Titcombe occupied it it was occupied by Welch & Plummer as a mitten-shop; couldn't state as to the time.

Q. Did Dunson occupy it in 1858 or 1859, or at any other time; and, if so, when?

(Objected to by defendants' counsel.)

A. He never occupied it to my knowledge.

Q. Do you know what place Dunson did occupy for glove and mitten purposes prior to his going to war, in 1861? And, if you do, please state.

(Objected to by defendants' counsel.)

403 A. Dunson occupied, in 1857, the building on Main street; I think it was known as the Heacock building. Heacock owned it afterwards; I don't know whether he owned it then or not. He was in that building up to the time he failed; the firm failed. He went from there, my impressions are, and I am quite positive in my impressions, to the basement of his house on Bleecker street, now occupied by James Farthing, jr.

Recross examination:

On his further cross-examination by defendants' counsel witness testified as follows:

Q. Will you say that you have seen as many as one dozen pairs of gloves of every one thousand dozen of pairs manufactured by persons other than yourself or your firm in Gloversville during the time you have resided and done business there?

A. I hardly know how to answer that question; it is dating a good ways back for my memory. I have seen a great many gloves. I should say that I had, to the best of my knowledge.

Q. Any more than that, do you think?

A. I couldn't say as to that.

Q. Do you know that Giles did not own the barn now situate on Middle street in 1858 and 1859?

A. The only way I can answer that question is by saying that it was generally conceded that Mr. Theodore Welch owned it. I couldn't swear positively that Giles didn't own it.

(Defendants' counsel objects to that part of the last answer of the witness wherein he states that it was generally conceded that Theodore Welch owned it, and asks that the same be stricken out.)

Q. Was the place occupied by Dunson in 1857, mentioned by you as being on Main street, and in a building subsequently owned by Heacock, where he then kept store and sold goods, or was it a place where he manufactured goods?

A. He manufactured and sold both there; cut in the basement.

Q. Do you know whether or not he cut and manufactured at any other place or places in Gloversville?

A. I couldn't swear whether they did or not?

Redirect examination:

On his further direct examination by plaintiff's counsel witness testified as follows:

Q. Please state whether the A. B. Giles's barn, occupied by you and Williams in 1858 and 1859, is or is not in the rear of and near to the lot of Henry E. Krause on which his house stands?

A. It is near the house, standing on or near his east line, on the south-east corner of Krause's lot.

Recross examination:

On his further cross-examination by defendants' counsel witness testified as follows:

404 Q. Where did Henry E. Krause reside in 1858 and 1859?

A. I don't know.

Q. Did he reside in the house referred to by you on your redirect examination as the Henry E. Krause's house?

A. I couldn't swear whether he did or not.

H. P. COLE.

Subscribed and sworn this 24th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JAMES M. KENNEDY, a witness produced and sworn on the part of the plaintiff, testified as follows:

I reside in Gloversville; am 40 years of age, and my occupation is a glove and mitten cutter. I worked for Hiram T. Cole and J. S. Williams in 1858, 1859, and 1860. In 1859 I worked for Cole and Williams in the barn known as the A. B. Giles's barn; this barn is situated on a lot owned now by Dr. Furbeck, situated on the west side of Main street. The barn is on the rear end of the lot. I know that that house now occupied by Furbeck was occupied by A. B. Giles. I know that Giles occupied the premises in 1869, and, I think, in 1870; I can't tell when he took possession. Cole and Williams occupied that barn in 1858 as a barn exclusively. Dunson did not occupy it to my knowledge in 1858 or 1859, or at any other time to my knowledge; if he had in 1858 or 1859 I think I would have known it. The firm of Dunson, Sprague & Brown failed, I think, about 1857. I recollect about the time Ed. Dunson went to war. I don't recollect any place that he worked prior to his failure except on Main street where he failed. That was on Main street north of the hardware store now occupied by Hanson, on the same side of the street. He occupied there two or three years prior to the failure, I should think. Subsequent to his failure he either manufactured for himself or some one else in the basement of the dwelling now occupied by James Farthing, jr. That was in 1860; whether it was one or more years, I can't tell. The A. B. Giles's barn I speak of is situated on the A. B. Giles's lot, in the rear of the Krause lot, east of it.

Q. During the time you worked in the A. B. Giles's barn, were there any bark-tanned sheep or lamb skins there, or used for gloves there, which had been softened, or which were in any other than the bark-tanned state?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Please state how long you have been acquainted with the glove and mitten business in Gloversville and vicinity, and what your
405 knowledge and opportunities have been for knowing the different kinds and qualities of leather used there in the manufacture of gloves and mittens?

(Objected to by defendants' counsel.)

A. Seventen or eighteen years. I have been an employee the entire time, with the exception of about four years. Have labored for several firms who were calculated to keep on hand and manufacture a general assortment of mittens and gloves, and have during the time visited a great many shops where gloves are cut and manufactured.

Plaintiff's Exhibits No. 1 and No. 2 are here shown witness, and the following questions asked:

Q. Please state whether prior to 1869 you ever saw in Gloversville and vicinity, or elsewhere, any glove-leather made from bark-tanned sheep and lamb skins of the character and quality of these exhibits now shown you?

(Objected to by defendants' counsel.)

A. I never saw any of that quality that I recollect.

Cross-examination:

On his cross-examination by defendants' counsel witness testified as follows:

Q. Did you ever manufacture mittens and gloves for yourself or on your own account?

A. I did.

Q. When?

A. I can't give the date; it was some years ago; I think 5, 6, or 7 years ago; nearer 7.

Q. For how long a time?

A. I can't tell exactly, perhaps two or three months. I cut up a few lambskins—lambskin kid.

Q. Is that all you ever manufactured for yourself or on your own account?

A. No, sir.

Q. When did you manufacture for yourself and on your own account except the short time you have stated?

A. In the year 1859 I cut and manufactured 9 dozen oil-dressed sheepskins; no more that I recollect of that I have manufactured on my own account.

Q. What years were you absent from Gloversville?

A. '69, '68, '67, and '65.

Q. Where were you?

A. I was in the western part of the United States—West and Southwest.

Q. Where were you in the year 1866?

A. I think I was in Iowa.

Q. Then you were absent from Gloversville 5 years?

A. No, sir; I was absent but 4 years. I may have made a mistake as to the dates. I should have said 1866, I think, instead of 1865.

Q. You don't remember dates very well, then, do you?

A. Not very; no, sir.

Q. Where did you work in 1858, with reference to the Giles's barn mentioned by you?

A. I worked on Elm street, in a basement of a house then occupied by Hiram T. Cole, but a short distance from the barn.

Q. At cutting gloves?

A. Yes, sir.

406 Q. Are you able to state positively that Mr. Dunson didn't do any work in that barn in 1858?

A. No, sir.

Q. Are you able to state positively that Mr. Dunson did not do any work in that barn in 1859, when it was used as a shop by Cole & Williams?

A. He did not.

Q. Do you mean to swear positively that Mr. Dunson didn't do any work there in 1859, or do you mean to say simply that he didn't to your knowledge?

A. I mean to say positively that Mr. Dunson did not do any work there while the barn was being used for the purpose of cutting mittens and gloves by Cole & Williams in the year 1859; they did not cut the entire year at that barn. What might have been done during the winter I don't know.

Q. Were you there every day during the summer, or were you absent at times?

A. I cannot state positively; I think I was not absent to exceed 3 or 4 days.

Q. Then might not Dunson have done some work there in the summer while you were absent?

A. It is barely possible he might.

Q. Do you think that you have seen as many as one dozen pairs of gloves out of every two thousand dozen pairs manufactured in Gloversville during the time you have been a glove-cutter there, or in that proportion of the leather there made into mittens and gloves?

A. Oh, perhaps not.

Redirect examination:

On his further direct examination, by plaintiff's counsel, witness testified as follows:

Q. How much and what part of the year 1859 did Cole and Williams occupy the A. B. Giles's barn to your knowledge?

A. Can't state positively the exact amount of time occupied as a cutting-shops; should think from 6 to 8 months in the summer.

Q. About how late in the year?

A. Perhaps up till October—may be the last of October; that was their usual custom.

Q. Did they then remove from there to some other place of business or simply close their business there for that season?

A. They stopped cutting for that season.

Q. Did they to your knowledge relinquish possession of the shop that season?

A. My remembrance is that they did not. I think they wintered a wagon there that winter, in the room we occupied as a shop, and kept their horse below in the basement.

JAMES M. KENNEDY.

Subscribed and sworn this 24th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

LEWIS P. JOHNSON, a witness produced, sworn, and examined on the part of the plaintiff, testified as follows:

407 I reside at Gloversville; am 39 years old, and am a manufacturer of mittens and gloves. I have been and am running a skin-mill for dressing oil-dressed leather, and have been about 15 years; have been manufacturing gloves and mittens five years this spring. I am acquainted with the process of tanning from the raw in oil and fat liquor; have been familiar with oil-dressing for fifteen years. Fat liquoring I never have had any experience in myself, but have seen it done. I know how it is done. I am some familiar with bark-tanning skins from the raw. We have dressed some that way. It was about three years ago that we first dressed some sheep-skins in that way. My manufacturing department is carried on in Spring street in Gloversville and oil-dressing on Fulton street in Gloversville. My tannery is in Mayfield, about six miles from Gloversville. Prior to my commencing manufacturing, I was familiar with the different kinds of leather manufactured into mittens and gloves in Gloversville and vicinity, and with the gloves and mittens made in the mitten and glove trade. Tanning from the raw in fat liquor is what we call Indian-tanned.

Q. Please state, if you know, whether the process and effect in the tanning from the raw by fat liquor or in oil is or is not substantially the same.

A. The process is different, but designed for one object; either will make leather. The effect of making leather is the same. Either will make leather.

Q. Please state, if you know, whether oil-dressing from the raw, and thus fitting the leather for gloves, is more or less expensive than first tanning from the raw in bark, and then adding the Russell process.

(Question waived.)

Q. Are you familiar with Russell's mode of treating bark-tanned sheep and lamb skins, and thus fitting them for gloves?

(Objected to by defendants' counsel.)

A. I am not, with the ingredients that he uses.

Q. Have you seen and do you know the leather that he makes after it is prepared?

(Objected to by defendants' counsel.)

A. I have, and do.

Q. State, if you know, the difference in expense between tanning sheep and lamb skins from the raw in oil and in bark per dozen?

(Objected to by defendants' counsel.)

A. That would depend upon circumstances. It would depend on the price of oil. At the prices of oil now at the present time I should think it would range from three to four shillings on a dozen. The oil is the most expensive.

Q. Please state whether there was, to your knowledge, any
408 leather in market in Gloversville and vicinity, or anywhere to your knowledge prior to 1869, like that of Russell's, made from bark-tanned sheep and lamb skins.

(Objected to by defendants' counsel.)

A. Not to my knowledge; no, sir.

Plaintiff's Exhibits Nos. 1 and 2 are here shown witness, and this question put:

Q. Please state whether you saw any leather like these exhibits shown you, in Gloversville and vicinity or elsewhere, produced from bark-tanned sheep and lamb skins prior to 1869.

(Objected to by defendants' counsel.)

A. No, sir.

Q. Please state whether, for the last ten years, there has or has not been any substantial change or improvement in the tanning or dressing of other skins than bark-tanned sheep and lamb skins for mittens and gloves in Gloversville and vicinity.

A. I don't see as there has been any improvement in oil-dressed.

Q. Please state whether it sometimes occurs that in tanning skins from the raw, in oil, fat liquor is applied, at some stage of the process, to the skins; and, if so, under what circumstances?

A. It is applied in one instance when we have the skins scoured clean and they are hanging out and there comes a heavy rain-storm and drenches them, and they become hard and stiff, we then use fat liquor for putting them back to their natural state. Then very often, in hot, muggy weather skins will become sour; that has a tendency to make them hard and flat, and we then use fat liquor; and then very often the skin will be scoured down too close. When they are scoured too close it makes them stiff and husky, and we use fat liquor then on them.

Q. Please state whether, after the use of fat liquor, in these instances that you have spoken of, the skin is scoured before staking or use.

A. They are scoured before we stake them and finish them. The fat liquor is scoured out of them.

Q. Please state whether the purpose and effect of the application of fat liquor in these instances mentioned by you is the same or different from its purpose and effect when applied to bark-tanned skin, and if different, how different?

(Objected to by defendants' counsel.)

A. I can see the difference. I will explain it. The difference is in the oil-dressed leather; where they are fat-liquored, it is scoured out of them, and in the bark-tanned it remains in.

Q. Please state whether the purpose and effect of the use of oil in dressing skins from the raw is or is not to tan the skin.

A. It is for the purpose of tanning.

409 Q. Please state whether that is or is not the purpose and effect of fat liquor when applied to a bark-tanned skin.

(Objected to by defendants' counsel.)

A. I don't think it has the effect of tanning bark-tanned. It is supposed to be tanned in the bark.

Q. In those cases that you have mentioned in which you use fat liquor in the oil-tanning process, please state whether or not the same effect might not be produced by the application of oil, or by returning them to the stocks again and running them in oil.

A. Yes, sir; we very often have skins that have become so sour that fat liquor will not bring them back, and we are obliged to run them over in oil.

Q. Please state whether, in the use of fat liquor in these instances of oil-dressing spoken of, the fat liquor is applied warm or cold.

A. Cold I have always used it.

Cross-examination:

On his cross-examination by defendants' counsel, witness testified as follows:

Q. In the cases mentioned by you on your direct examination, when in the oil-dressing of skins such skins become flat, hard, stiff, or husky, and in such state you treat them with fat liquor, for what purpose do you apply fat liquor to them?

A. For the purpose of bringing them back to their natural state where they should have been if they had been properly put through, not got wet or scoured, or anything of that kind, or got scoured too clean.

Q. What state would such skins be in if they had been properly put through?

A. They would be soft, plump, pliable, and ready for cutting—fit for the block.

Q. Does the application of fat liquor to them when they are hard, flat, stiff, or husky bring them to the state just mentioned by you, that they would have been in if they had been properly put through?

A. It will not in all cases, but as a general thing it will with one exception; I don't think you can get quite as smooth a face on a fat-liquored skin as you could if they hadn't been fat-liquored.

Q. State whether or not, when in oil-dressing skins they become stiff, hard, flat, or husky, it is cheaper or more expensive to treat them with fat liquor than it would be to mill them over in oil; and if there is any difference in the expense, state how much per hundred skins.

A. Fat liquor would be easy a third cheaper.

Q. How long have you been engaged in dressing skins and manufacturing them into leather for mittens and gloves?

A. I have been in it 15 years.

Q. How frequently did you use fat liquor in treating such skins in the process of preparing them for mittens and gloves?

410 A. It is done very often in the summer season in hot, muggy weather. I am not bothered in the winter season much of any.

Q. About how often?

A. I don't know as I can tell; it depends upon the weather. It is used very frequently in the summer season.

Q. And always for substantially the same purpose?

A. Yes, sir; for restoring them back to their natural state.

Q. Do you mean to be understood as testifying that within the past ten years there has been no material improvement in the oil-dressing of skins, in preparing them for mittens and gloves in Gloversville and vicinity, and has there not been a marked improvement within that time in the preparation of such skins?

A. I don't see wherein there has. I've milled them just the same as I did ten years ago. There are different kinds of skins that have come in the market that were not in ten years ago, and wasn't used.

Q. Are you a practical tanner in the business of bark-tanning?

A. I don't profess to be; I can tell when a hide is tanned, though.

Q. Are you able to state the expense of tanning sheep or lamb skins from the raw in bark?

A. The nearest I can come to that, we dressed a lot and figured on them, and calculated that they would cost not to exceed four shillings a dozen.

Q. You mean sheep or lamb skin?

A. Part of those were sheep and part lamb, with the grain on.

Redirect examination:

On his further direct examination by plaintiff's counsel, witness testified as follows:

Q. Please state whether or not in the cases you have mentioned, in which you apply fat liquor during the process of oil-tanning, the skin contains what is known as squeak when the fat liquor is applied.

A. There is no squeak about it.

Q. What is the cost of dressing sheep and lamb skins in oil from the raw?

A. About, on an average, nine shillings per dozen.

L. C. JOHNSON.

Subscribed and sworn this 24th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

EUGENE GUY, a witness produced, sworn, and examined on the part of the plaintiff, testified as follows:

I reside at Gloversville; my age is 33; my business is kid-dressing; I was acquainted with E. W. Dunson, of the late firm of Dunson, Sprague & Brown. I first became acquainted with him in 1860. Edgar W. Dunson went to war in the fall of 1861. From the time I
411 first knew him in 1860 to the time he left for the war he had his cutting-shop in the basement of his house on Bleecker street, and his store-room, and where the girls worked, was in Park Block on Main street. I was in his shop during that time very often.

Q. State whether, during that time, when you was in his shop, you saw the kind of goods he manufactured.

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. Please state whether, when he went to the war, you took of him the stock of goods he then had on hand.

(Objected to by defendants' counsel.)

A. Yes, sir; most of them.

Q. Did you see his whole stock or all he had left when he turned it over to you?

A. Yes, sir.

(Plaintiff's exhibits Nos. one and two were here shown witness and the following question asked:)

Q. Please state whether, from the time you became acquainted with Dunson and his business down to the time he left for the war, as you have stated, you saw in his possession or on his premises any leather or goods made from leather, or whether there was any such leather or goods in the stock which he turned over to you, made from bark-tanned sheep or lamb skins, as these exhibits now show you.

(Objected to by defendants' counsel.)

A. In the stock turned over to me there was none, and, to the best of my recollection, I never saw any in his possession or on his premises.

Q. Please state whether, in the stock turned over to you, there were any gloves or mittens made from bark-tanned sheep or lamb skins in the bark-tanned state.

(Objected to by defendants' counsel.)

A. There were bark-tanned fleshers.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. You do not mean to be understood as testifying that, from the time you became acquainted with Dunson in 1860 to the time he went to war in 1861, you saw or knew all the different kinds of leather used by him in his business for gloves or all the different kinds of gloves he manufactured during that time, do you?

A. I could not swear positive that I saw all the goods he manufac-

tured. I may have seen all the different kinds of leather and I may not. I cannot swear that I did.

Q. Did you, during this time or any part of it, have any interest in Dunson's business?

A. No, sir; I did not.

412 Q. Then, when visiting his shop or place of business you were merely a casual observer, and did not go there for the purpose of learning what kinds of leather he used or kinds of goods he made?

A. I did not go there for business, but merely went there to chat, a visiting, and pass away the time.

Q. Then you cannot testify that, from the time you became acquainted with Dunson to the time he went to war, he did not make leather for gloves from bark-tanned sheep and lamb skins, such as plaintiff's exhibits Nos. one and two, shown you, and made soft as they are, and made gloves from such leather, can you?

(Objected to by plaintiff's counsel.)

A. I could not testify that he did not do it. He might have done it secretly for all I know, as I was not with him all the time.

Q. Could he not have made during that time such leather and gloves without doing it secretly and yet you not know it?

A. I think not.

Q. Why not?

A. Because we were very intimate, and he was telling me his business a great deal, and I was there very much, and if there had been such leather I think I would have seen it.

Q. Were you carrying on any business at this time?

A. I did.

Q. What?

A. Kid-dressings.

Q. How far from Dunson's place of business?

A. Across the street from Dunson's cutting-shop.

Q. About how many hours during each day were you attending to your business at your kid-shop during this time?

A. Sometimes two hours a day and sometimes five. I moved there and was trying to get customers, and was running from one to another.

Q. Then you did not have many customers at that time in your business?

A. Only three or four or two or three the first year. I might have had a dozen before the year was out.

Q. What part of the day during this time were you looking after Dunson's business or spending your time at his shop chatting or visiting, as you have stated?

(Objected to by plaintiff's counsel.)

A. Sometimes ten minutes, sometimes half an hour, sometimes two hours, evenings or day-time.

Q. Mostly in the day-time or evening?

A. I did not keep track of it; sometimes in the forenoon, sometimes in the afternoon, sometimes in the evening.

Q. At which one of Dunson's shops did you call frequently, as you have stated, and in what part of the shop did you spend your time chiefly while there?

A. Chiefly at the cutting-shop on Bleecker street.

Q. What was Dunson doing usually while you were there?

A. In 1860 he was usually cutting. He was the only one; but the latter part of 1860 and fore part of 1861 he had two or more cut-

413 ters. In 1861, when I was there, he was tying up and boxing gloves ready to ship, and sometimes he was doing nothing.

Q. Is it common for manufacturers of gloves in Gloversville to have gloves cut at other places than their own shops, especially from leather made from sheep-skins?

(Objected to by plaintiff's counsel.)

A. I think it is.

Q. Did Dunson during this time make up such of his gloves as were not sent out to be made at his shop on Main street?

(Objected to by plaintiff's counsel.)

A. There were but very few made up at the shop; were mostly sent out and made up in the country.

Redirect examination:

On his redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. Did you and Dunson marry sisters?

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. In 1860 were you starting the business of kid-dressing at the place in Gloversville you speak of?

A. Yes, sir.

Q. Was there more than one room in this cutting-shop you speak of, on Bleecker street?

A. That is all—in the basement.

Q. Did Dunson, during the period you have spoken of, to your knowledge, have goods cut at any other place or places than his shop on Bleecker street?

A. I don't know. Not to my knowledge.

Q. Were his gloves put up—that is, packed in boxes—or put up in bundles for sale at his shop in Bleecker street?

A. Not all of them, I don't think.

Q. If not, what portion of them were, and where were the rest put up?

A. I could not tell the proportion. Some were put up at his other place, on Main street.

Q. During the period spoken of did you visit the other place on Main street?

A. Yes, sir.

Q. Referring to your answer on the cross-examination, in which you say, in substance, it is common for manufacturers to have gloves cut at other places than their own shops, please state whether in such cases it is not also common to have them returned and put up at their own shops.

A. Yes, sir; it is. They are done both ways.

Q. Were those that were sent into the country to be made returned to him to be by him put up?

A. I think they was.

On his recross-examination by defendants' counsel, the witness further testified as follows:

Q. Have you any personal knowledge as to what was done with or what become of the gloves sent into the country to be made?

A. All I can say is I see him send some out in the country to be made, and see him receive some from the same parties when they were returned.

414 On his further re-examination by plaintiff's counsel, the witness further testified as follows:

Q. State whether it is or is not common for manufacturers in Gloversville, when they send their goods into the country to be made, to have them returned after making to their own shops and then laid off and put up for sale.

(Objected to by defendants' counsel.)

A. I think it is.

EUGENE GUY.

Subscribed and sworn this 25th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

WILLIAM H. COMBES, a witness produced, sworn, and examined by and in behalf of plaintiff, testified as follows:

I reside in Gloversville; am thirty-one years old. My business is laying off gloves by steam at Gloversville. I have been familiar with the manufacture of gloves and mittens at Gloversville for 17 years. I was with George W. Gillette in the manufacturing business there in 1867 and 1868.

Q. State whether at any time, and if so when, you and Gillette took some bark-tanned sheep or lamb skins to Defendant Dodges' shop in Gloversville to be softened and prepared for gloves.

(Objected to by defendants' counsel.)

A. We did; but am not positive whether it was in 1867 or 1868.

Q. State whether on the occasion of your being there with the skins just referred to, you had conversation with either or both the defendants in relation to the treatment of these skins.

(Objected to by defendants' counsel.)

A. We did; with both.

Q. State whether the defendants assisted you in treating these skins.

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. Please state whether fat liquor was used in any way in the treatment of these skins.

(Objected to by defendants' counsel.)

A. No, sir.

Q. Please state whether during the time you were with Gillette you and Gillette experimented on bark-tanned sheep and lamb skins under the direction of Wm. H. Monroe for the purpose of fitting and preparing such skins for mittens and gloves.

(Objected to by defendants' counsel.)

A. We did.

Plaintiff's Exhibits Nos. one and two were here shown witness, and the following questions asked:

415 Q. Please state whether in any of these experiments you succeeded in making leather of such quality, value, and fitness for gloves as these exhibits now shown you.

(Objected to by defendants' counsel.)

A. No, sir.

Q. Please state whether, prior to the date of plaintiff's patent, you ever saw at Gloversville and vicinity or elsewhere, leather made of bark-tanned sheep or lamb skins, of such quality, value, and fitness for gloves as the exhibits now shown you.

(Objected to by defendants' counsel.)

A. None that I remember, unless it be leather made by Mr. Russell himself.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. When first did you see the kind of leather as plaintiff's exhibits one and two shown you, made by Russell, as you understood?

A. Some time between 1865 and 1867 is the first I remember of seeing anything of this kind.

Q. State, if you are able, the year, and the time in the year, when you first saw it.

A. I don't think I can do it.

Q. Did you see it in 1865, and if so what time in that year?

A. I think I did, during the summer.

Q. Where did you see these?

A. I think I saw them at Mr. Russell's shop on Fulton street, at Gloversville, if I remember right.

Q. Did you at or about the same time see any gloves made from such leather at Russell's shop on Fulton street?

A. I think I did.

Q. What kind of gloves?

A. Those known as "pink-tops," I think they call them.

Q. What is a pink-top glove? Describe it.

A. It is a button-top glove, with a band and red felting set under the band; the edge of this felting is notched, and this finishes the glove instead of binding, as they usually do.

Q. About how many of these gloves did you see there at that time, and was such leather then being cut into gloves at Russell's shop?

A. I think it was 4 or 5 dozen that I saw; I don't know as such leather was then being cut into gloves, as I was not in the cutting-shop.

Q. What quantity of such leather did you see there at that time?

A. I think there was one or two skins lying upon the table.

Q. In what room in Russell's shop did you see these gloves and this leather?

A. It was in the basement.

Q. Where he made up his goods?

A. There was one machine there to work; I don't know whether he made the goods entire there or not.

Q. Was this machine then running on this class of goods?

A. It was.

Q. Was Russell at that time a manufacturer of gloves, and did
416 he carry on that business at the place mentioned by you on Fulton street?

(Objected to by plaintiff's counsel.)

A. He was the manufacturer of these gloves that I saw, and occupied that one room, but whether he manufactured at any other place I don't know.

Q. When next after the occasion you have already mentioned did you see such leather as plaintiff's Exhibits Nos. 1 and 2 shown you at Russell's?

(Objected to by plaintiff's counsel.)

A. Not until after the patent was obtained; I think it was in 1869.

Q. When, in giving your testimony in this case, you have mentioned the name Russell, did you mean Mr. Russell, the plaintiff in this suit?

A. I did.

Q. On the occasion mentioned on your direct, of Gillette and yourself

taking skins to Dodge's in 1867 or 1868 to be prepared for gloves, did Gillette and you take with you on that occasion a prepared receipt for the treatment of such skins at Dodge's?

A. Yes, sir.

Q. Did you treat the skins according to that receipt or direction for their treatment?

A. We did.

Q. Of whom and when did you procure that receipt?

(Objected to by plaintiff's counsel.)

A. Mr. Gillette obtained the receipt; I had nothing to do with it.

Q. When and from whom did Gillette obtain it?

(Objected to by plaintiff's counsel.)

A. I can't say positively; I think the man's name was Smith. As to the time I don't know anything about that.

Q. It was not obtained from the defendants, or either of them, was it?

A. No, sir.

Q. Did the defendants, or either of them, have anything to do with the treatment of these skins, except to assist Gillette and you in treating them according to the receipt or directions you took there with you for their treatment?

A. No, sir; they were handled according to directions.

Q. State as near as you are able the number of bark-tanned sheep and lamb skins treated by Gillette and you, under the directions of Monroe.

A. I don't know as I can give you the number. We had two or three experiments with few skins each time.

Q. State the number of skins, as near as you are able.

A. I think on two occasions we used half a dozen each time.

Q. Did not Gillette and you treat as many as fifty dozen or more bark-tanned sheep and lamb skins in a single year, according to Monroe's directions, and make such skins after treatment into gloves?

A. I can't say whether we did or not.

Q. Did Gillette and you treat bark-tanned sheep and lamb skins according to Monroe's direction with fat liquor, or with fat liquor
417 and some other ingredients, and after treating such skins make them into gloves?

A. Not to my knowledge.

Q. At the time in 1865, when you saw the gloves mentioned by you in your testimony at Russell's shop, did Russell have a cutting-shop to your knowledge; and, if so, where?

(Objected to by plaintiff's counsel.)

A. I don't know that he did.

Q. Do you know where the goods he was then making were cut?

(Objected to by plaintiff's counsel.)

A. No, sir.

On his further redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Are you able to state with any degree of certainty or accuracy the year in which you saw the leather, and four or five dozens of gloves at Russell's shop spoken of on your cross-examination?

A. No, sir.

Q. Please state whether or not that leather in the skin and in the gloves referred to was equal in quality, value, and fitness for gloves, as the Exhibits Nos. one and two shown you on your direct examination.

(Objected to by defendants' counsel.)

A. I don't think it was.

Q. Did you know by what process or in what manner it had been prepared and put in the condition in which you saw it?

A. I did not.

Q. In the treatment of the skins by you and Gillette, referred to on your cross-examination, by whom, yourself or Gillette, were they treated, or mostly treated?

A. They were handled mostly by Gillette. He prepared the preparation.

On his further recross-examination by defendants' counsel, the witness further testified as follows:

Q. Is it your best recollection now that it was in 1865, as stated by you on your cross-examination, that you saw the leather and the gloves mentioned by you at Russell's shop?

(Objected to by plaintiff's counsel.)

A. I cannot state the date exactly; I know of no occurrence that would impress the time upon my mind; two or three years might have passed unnoticed; that is as near as I can locate the time.

Q. What is as near as you can locate the time?

A. About the year 1865.

Q. Is it now your best recollection that it was in 1865?

A. Yes, sir.

Q. Since you testified on your first cross-examination that you thought it was in 1865 you saw the skins and gloves mentioned by you at Russell's shop, and during the recess for dinner, were you talked
418 with on that subject by John Fulton, Russell's son-in-law?

A. Mr. Fulton said nothing to me. I said to him, I might possibly have the dates wrong. The conversation was all on my part.

Q. Do you mean to swear that he said nothing to you on that subject?

(Objected to by plaintiff's counsel.)

A. He simply replied that I did not want to say anything to him about it, and there the conversation dropped.

Q. Do you mean to swear that Fulton's conversation with you, in regard to your testimony in this case, closed with the remark, that you must not say anything to him about it?

A. Yes, sir.

Q. Where was that remark made?

A. Just as we turned the corner of this building on the sidewalk.

Q. How far did you go with Fulton from this building at the time of this conversation, and where did you go?

A. We went as far as, and to the Johnson House.

Q. Did you learn or understand how the leather you saw at Russell's shop in 1865, (I mean that made into gloves you saw,) and also that you saw being made, and that you saw in the skin, had been treated?

A. No, sir.

WILLIAM H. COMBES.

Subscribed and sworn this 25th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

CHARLES W. ROSE, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville. I am 39 years of age. My business is manu-

facturing mittens and gloves. I have resided at Gloversville eight years, I think.

Q. Please state whether there was, in 1866 or 1867, a mitten and glove laying-off shop in Gloversville, on Main street, two or three doors from the corner of Fulton street, up-stairs.

(Objected to by defendants' counsel.)

A. Not that I have any recollection of.

Q. Please state whether you owned the building in 1866 or 1867 described in the above question.

A. I don't know as I can tell whether I had possession of that property or not; I can't tell positively in what year I did take possession.

Q. Please state, as nearly as you are able, when you took possession of that property, if at all.

A. I think it was between the years 1866 and 1868; I can't tell, as I said before.

Q. Please state whether there was, at the time you took possession, any laying-off shop, or whether, to your knowledge, there had one been there previously.

(Objected to by defendants' counsel.)

419 A. I haven't any recollection of any being in there previous to my taking possession or at the time.

Q. Please state whether there was or was not a laying-off shop there when you did take possession?

(Objected to by defendants' counsel.)

A. No, sir; there was not.

Q. Did you open one there after you did take possession, or was there one opened; and, if so, at what time?

A. I rented it to a party. I have an entry as let on the first day of April, 1870, which I suppose to be correct, to a party who did open a laying-off shop in which the gloves were laid off by steam. I rented it to H. C. Dey; I think Henry C. Dey.

Q. Was that shop up-stairs?

A. Yes, sir.

Q. Please state whether David Watson worked in that shop the first year it was opened.

A. Yes, sir; he worked in that shop laying off gloves that year.

Q. Do you know what that room, which was subsequently used as a laying-off shop, was used for prior to your taking possession?

A. I think they had billiard-tables in it.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. The building referred to by you is on the corner of Main and Fulton street, in the village of Gloversville, is it not?

A. No, sir; it is not.

Q. Is it a building on Main street next to the one on the corner of Main and Fulton street?

A. Yes, sir.

Q. Are you able to say whether or not there was a shop for laying off gloves by steam in that building in 1866 or 1867?

A. Not to my knowledge. To the best of my recollection, there was not.

Q. Can you state whether or not there was in the year 1866 or 1867 on Main street, in Gloversville, in the immediate vicinity of your building, near the corner of Main and Fulton streets, a shop for laying off gloves by steam?

A. Not to my knowledge.
Q. Are you able to swear whether there was or was not?
A. I could not swear positively whether there was or was not.

On his redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. Were you in Gloversville, familiar with this locality, in 1866 and 1867?
A. Yes; I was living in Gloversville; and suppose I might say that I was familiar with this locality.
Q. State your best recollection as to whether there was or was not a laying-off shop in what afterwards became your building, or in its immediate vicinity, prior to the spring of 1870, when it was opened by Dey.
(Objected to by defendants' counsel.)
A. I can't state positively. The best of my recollection is that there was not.

420 On his further recross-examination by defendants' counsel the witness further testified as follows:

Q. Have you any present recollection so as to enable you to state whether there was or was not in the vicinity of the corner of Main and Fulton street, in Gloversville, a shop where gloves were laid off by steam in 1866 or 1867?
(Objected to by plaintiff's counsel.)
A. Not to the best of my recollection.
Q. Can you swear positively whether there was or was not?
(Objected to by plaintiff's counsel.)
A. No, sir; I could not swear positively.
Q. Can you say whether or not there was in that immediate vicinity, on Main street, in 1866 or 1867, a shop where gloves were laid off by hand?
A. No, sir.
Q. How many doors are there on Main street between your building and the corner of Main and Fulton street?
A. Two doors.

On his further redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Have you any recollection of a shop in your building, or its immediate vicinity, on Main street, in 1866 or 1867, where gloves were laid off by hand?
A. No, sir.

C. W. ROSE.

Subscribed and sworn this 25th day of March, 1873, before me—
J. WENDELL,
Special Examiner.

MARVIN J. WHITING, recalled and resworn by and in behalf of plaintiff, testified as follows:

Q. In the defendants' treatment of bark-tanned sheep and lamb skins with fat liquor while you were with them, as stated on your former examination in this suit, please state whether in case the skins thus treated had been shaved when they got them they subjected them more than once to fat liquor.
(Objected to by defendants' counsel.)
A. No, sir.

Q. In case the skins so treated by them had not been shaved when they got them, state whether or not they first wet them for shaving, and after shaving subjected them to the fat liquor, as stated on your former examination.

(Objected to by defendants' counsel.)

A. They were wet for shaving, and after shaving were subjected to fat liquor, as stated on my former examination.

On his cross-examination by defendants' counsel the witness further testified as follows:

421 Q. Did you, while in the employ of defendants, treat any skins with fat liquor?

(Objected by plaintiff's counsel.)

A. I did on the first dipping for shaving.

Q. Is that all?

(Objected to by plaintiff's counsel.)

A. That is all I had to do with the dipping part in using fat liquor.

Q. Where did you dip those that you dipt to prepare them for shaving?

(Objected to by plaintiff's counsel.)

A. I dipped in a room in the east end of the coal-house, what I have heretofore called an enclosure.

Q. What you have heretofore called the "drive-way?"

(Objected to by plaintiff's counsel.)

A. It was built expressly for a drive-way, but was used for the treatment of skins when I was there.

Q. So far as you know or are able to state, what persons treated the bark-tanned sheep and lamb skins that were treated by defendants with fat liquor after the skins were shaved?

A. S. Dodge, sen., generally.

Q. Is that all?

(Objected to by plaintiff's counsel.)

A. That is all on the last dipping.

M. J. WHITING.

Taken, subscribed, and sworn this 25th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

CORNELIUS A. KING, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville; have resided there most of the time for 24 years past; my age is 32 years. My business is kid-dressing. I have been engaged in the business of kid-dressing for about fifteen years. I have not been particularly familiar with the manufacture of gloves and mittens; not with that particular branch. My occupation has been principally among the kid-leather; I am familiar with that in all branches; I have a general knowledge, in seeing the goods, and the skins and leather they were cut from, of the manufacturing business, and the goods used, and the like of that.

Q. Have you seen, and do you know the kind of leather made by Russell by what is known as his patent process?

(Objected to by defendants' counsel.)

A. Yes, sir; I have.

Q. Do you know the defendants, Dodges, and did you work for them at any time; and, if so, when, where, and how long?

A. I did work for them. I worked for them at two different times; first, from the fall of 1853 to January, 1857, and the next from Dec.,
422 1862, to January, 1869; was at Gloversville.

Q. In what were you engaged while thus employed for defendants?

A. Principally in finishing kid. I worked at all its branches.

Q. Please state whether or not you had access to all parts of their premises, and knew while there the character, kinds, and extent of their business?

(Objected to by defendants' counsel.)

A. I did have access to all parts of their premises, and knew while there the character, kind, and extent of their business.

Q. Please state whether, while you were there, they treated any bark-tanned sheep or lamb skins with fat liquor?

(Objected to by defendants' counsel.)

A. I never saw them treat any in that way.

Q. Please state whether they did or did not treat any such skin with eggs while you were there?

(Objected to by defendants' counsel.)

A. Yes, sir; they did.

Q. Did Wm. H. Monroe work there the time you were there; and, if so, how long?

(Objected to by defendants' counsel.)

A. Yes, sir; I think about two years, if my memory serves me right.

Q. State whether he there treated any bark-tanned sheep or lamb skins with fat liquor.

(Objected to by defendants' counsel.)

A. I never saw him treat any there with fat liquor.

Q. Are you acquainted with kid leather that has been tanned in salt, slum, and eggs?

(Objected to by defendants' counsel.)

A. I am acquainted with kid leather tanned in alum and salt.

Q. Please state whether such leather has in it what is known as squeak.

(Objected to by defendants' counsel.)

A. All I ever handled; I never saw any.

Q. Are you acquainted with cape sheep, which are known and sometimes called "Bevington tanned?"

(Objected to by defendants' counsel.)

A. I have seen them and handled them.

Q. Please state whether those are or are not bark-tanned.

(Objected to by defendants' counsel.)

A. No, sir; they are tanned in alum and salt.

Q. Are you acquainted with an article used in kid-dressing which is known ordinarily as gum?

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. Please state on what kind of skins or leather that is used, how, and for what purpose.

(Objected to by defendants' counsel.)

A. It was used on what is called black kids. It is generally
423 put on the grain side with the sponge, for the purpose of throwing the color darker, and giving a gloss and finish to the skin.

Q. Please state into how many colors and shades kid leather is dressed?

(Objected to by defendants' counsel.)

A. I don't know as I can answer that. There are a great many different shades and colors; might go from a dozen to twenty.

Q. Is the gum used on any except the black?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Of about what consistency or thickness is the gum when applied to the surface, as you have described?

(Objected to by defendants' counsel.)

A. About the consistency of soft-soap, I should think, as near as I can compare it.

Plaintiff's exhibits Nos. one and two are here shown the witness, and the following question asked:

Q. Please state whether, prior to 1869, you ever saw, in Gloversville or elsewhere, leather made from bark-tanned sheep or lamb skins of such character, quality, and fitness for gloves as the exhibits now shown you.

(Objected to by defendants' counsel.)

A. No, sir.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. During the time you have resided in Gloversville and worked at kid-dressing, what part of the time have you worked as a laborer for others, and what part of the time have you carried on the business of kid-dressing yourself?

A. I worked about two years and one month for James Kent, and I worked for Aulcock and McDonald about one month. I worked for Henry Hull about a month and a half, worked about one month for White and Brother, and worked for the Dodges, as before stated. I carried on business myself for nearly two years.

Q. When did you carry on business for yourself?

A. From January, 1869, to about the first of January, 1871.

Q. Then you were not in the employ of the defendants from January, 1869, to January, 1871, any part of the time?

A. No, sir.

Q. Did you testify, on the trial at Utica, in March, 1871, in a case between this plaintiff and one Albert Klein for an alleged infring'ment of plaintiff's patent, that you worked for Mr. Dodge from the fall of 1862 until the spring or winter of 1870; and, if so, were you mistaken?

A. Yes, sir, I think I did; and I thought of it, after I got off the stand, that I made a mistake in the latter date, but there was no chance there to correct it then.

Q. During the time you were in the employ of the Dodges, or either of them, was your employment there almost entirely at other
424 branches of the business than what is called "dressing the skins?"

A. For the last few years it was; for the first three or four it was not.

Q. For how many of the last few years was it?

A. Probably for four or five years.

Q. What was the character of your employment for the Dodges, or either of them, during the first few years you worked there?

A. Principally brushing dust-colors on oil-leather, from 1853 to 1857.

Q. By your last answer you mean simply coloring of the leather?

A. Yes; principally coloring leather.

Q. Was the place where you labored in a room or shop apart from the room or shop where the skins were dressed?

A. They were in two different rooms, adjoining, with a door between them, generally open.

Q. You do not mean to be understood as testifying that the Dodges did not treat bark-tanned sheep or lamb skins with fat liquor while you were in their employ, or that Monroe did not when he was with them, do you?

A. Yes, sir; I mean to say that I never saw that used, but I saw other things used while I was there, but I never saw that used.

Q. When in the employ of Dodges, or either of them, you simply done such labor as was assigned to you to do, and had no general superintendence of their business, did you?

A. I simply done what was assigned me, and had no general superintendence.

Q. Was there a period of time, from about the year 1857 to the commencement of 1862, that you did not reside in Gloversville or work there; and, if so, where did you then reside and what were you doing?

A. There was two seasons, of about six months each, during these five years, that I did not reside or work there. I resided in Dutchess County these two seasons; done farming, vegetable gardening, and milk business.

Q. If you resided in the village of Johnstown at any time, state when, how long, and your business there.

A. It was either in 1858 or the early part of 1860, I kept a saloon here, under the building where this now stands, for about two weeks.

Q. Did you ever work at the business of tanning cape sheep from the raw, in what is called or known as Bevington tan, so as to be able to state whether or not bark is used in such tanning?

A. Yes, sir; I have assisted in doing it, not in tanning, but in putting a tan color on.

Q. (Question repeated.)

A. In the first place, after those skins are worked through lime, and the like of that, then we put them into what we call a drench, made of wheat bran. They are put into that and allowed to ferment for the purpose of removing the lime and other filth which is in the skin; then they are taken from that and put into a preparation made of hemlock-bark and other dye-stuffs, for the purpose of getting the color;
425 then they are put into alum and salt liquor for the purpose of making the leather.

Q. (Question repeated.)

A. I have, at what they call an imitation of the Bevington tan. We don't get up the Bevington tan here.

Q. Do you, or do you not, know that the Bevington-tanned skins take their name from a tanner in England by the name of "Bevington," and do you know anything about how or with what he tans?

A. My answer to the first question is, "I have been told that is what they take their name from;" but what he gets his colors with I don't know; but what he tans them with I do know.

Q. How do you know with what he tans?

A. Because I have had the skins in the rough state for the purpose of washing them, to remove a certain amount of the alum and salt, previous to egging.

Q. How do you know those were Bevington-tanned skins?

A. For the same reason that I know there was a man in England by the name of Bevington. I was told they were Bevington-tanned skins.

Q. Is that all?

A. I had seen skins before that were called Bevington skins, and

these resembled them; and from that and what I was told I knew they were Bevington skins; that is all the knowledge I have of them.

Q. When and where did you work at the imitation of the Bevington-tanned mentioned by you?

A. I assisted Mr. Dodge, in the first place, and afterwards done it for myself.

Q. Do you pretend to have seen all the different kinds of leather used for gloves, and all the different kinds of gloves manufactured at Gloversville and vicinity for the last ten or twelve years?

A. No, sir; but I have seen a great many; but I might not have seen them all. I would not like to swear I have seen all.

Q. From the time you commenced work for the Dodges, in 1862, down to the time you quit work there, did you work in the same shop or building where they treated skins, or in a shop in a separate building?

A. A part of the time I worked in the same building, and a part of the time in a separate building.

Q. In which the principal or greater part of the time?

A. The principal part of the time in the same building; about six years of that time in the same building; but the last two years in a separate building.

Q. Did you work in a separate building from the time you commenced work, in 1862, to the time Dodge put up a drum for the purpose of running skins in?

A. No, sir; all was carried on in one building till about the time the drum was put in.

Q. Did you work there after the drum was put in?

A. Yes, sir; I think the drum was put in in 1866 or 1867, and I quit work in 1869.

Q. From the time the drum was put in did you work in a separate building?

A. Yes, sir.

426 On his further redirect examination by plaintiff's counsel the witness further testified as follows:

Q. While at Dodges, when not engaged in dressing leather, what was your business?

(Objected to by defendant's counsel.)

A. Principally staking and finishing.

Q. Please state whether, during all the time you worked for Dodges, their business premises were compact or otherwise, and whether you could and did see all the branches of business carried on by them.

(Objected to by defendant's counsel.)

A. Not all the time; the first two or three years they were. They employed but few hands, and their place of business was small. About 1864, or might be a little later, they built a larger building, and was not so compact. I had access to all parts of the premises. In a general term, I saw all the branches of the business carried on by them.

Q. If I understand you correctly on the cross-examination, their business was all carried on in one building down to the time of the erection of the drum, which was about two years before you left?

(Objected to by defendants' counsel.)

A. As I said before, up to the time of the erection of their new building, their business was all carried on under the same roof and after, until they put in the drum, about two years previous to 1869, when I quit work.

Q. How large was the new shop you speak of; how many operating-

rooms did it contain; how were these rooms situated in relation to and distance from each other?

A. I think it was about 45 feet square, if I remember right. It contained, I think, three operating-rooms; two of these were in the basement, called the coloring and dressing rooms. The other was the staking and finishing room, on the first floor above ground.

Q. How were the dressing and coloring rooms situated as to each other, and were they or not kept open to each other?

A. They were separated by a brick wall. Yes, sir; there was a large door and window in this partition-wall. The door was kept open during working-hours; may have been closed after that. The window had no sash nor glass in.

Q. Were there any facilities for treating skins with fat liquor in the staking-room above?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Where was the drum situated in reference to this building you have just been describing?

A. It was situated in another building, called the splitting-shop. I should think about sixty yards from the building just described.

Q. What kind of business was done in the building where this drum was situated?

427 A. When it was first built it was used for splitting hog and deer skins. After that, it was generally used for the purpose of egging, dressing skins, etc.

Q. How long after the erection of the building before it was used for egg-dressing?

(Objected to by defendants' counsel.)

A. It might have been used in a month afterwards for dressing and egging; might have been more, might have been less; am not certain.

Q. To what do you refer by the term "dressing, etc.?"

A. For dressing and egging is what I meant by dressing, etc.

Q. Was there more than one room in that building you now speak of, in which they operated?

A. On the lower floor there was but one room. There was a loft there, used for packing and one thing or another, and I don't know but there was some drying done there sometimes.

Q. Where were the skins that were dressed and egged in that building staked?

A. Over in the other shop that I before described.

Q. Is there a class of skins in use for gloves in Gloversville and vicinity known as Bevington tans?

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. Is there also a class of skins that are dressed in imitation of Bevington tans?

A. Yes, sir.

Q. If I understand you correctly on your cross-examination, you have dressed and assisted in dressing the latter class?

A. Yes, sir.

Q. Are these in any degree bark-tans?

(Objected to by defendants' counsel.)

A. There is bark used for the purpose of making the color.

Q. Is it used for any other purpose than giving it color, and does it have any appreciable effect in the tanning or leathering the skin?

(Objected to by defendants' counsel.)

A. Not in these skins; not any to my knowledge.

Q. Please state whether or not a person understanding the business of dressing skins by inspection of the imported Bevington tans, and their treatment as you have described, done by yourself, is able to determine whether they have been bark-tanned or tanned by alum and salt?

(Objected to by defendants' counsel.)

A. Yes, sir, he is.

Q. Please state whether the imported Bevington skins used in Gloversville and vicinity are bark-tanned; and, if not, how they are tanned, judging from your inspection and treatment as you have before stated.

A. The tanning for the color may be done with bark, but the leather is made with alum and salt.

Q. After the application of the bark for the purpose of coloring, as you have described, please state whether the skin in the state in which it then is is leather, or in what is known as the bark-tanned state.

(Objected to by defendants' counsel.)

428 A. The skin is not leather, I should think not, in the bark-tanned state, as that would indicate they were tanned in bark.

On his further cross-examination by defendants' counsel the witness further testified as follows:

Q. Are you able to swear that any of the skins called "Bevington tanned" which you have seen in this country are in fact and imported Bevington-tanned skins?

(Objected to by plaintiff's counsel.)

A. I know nothing about it from my own personal knowledge, except what I am told.

Q. How do you determine, in case where bark is applied to a skin and also alum and salt, what proportion of the tanning or leathering is done by the bark and what by the alum and salt, where you did not treat the skin yourself, or see them treated?

(Objected to by plaintiff's counsel.)

A. My determination would be that, where there had been bark enough used to make the color, *that* the leather was produced by the alum and salt.

(Question repeated and objection repeated.)

A. If you should cut a piece off from the skins you would find that the coloring-matter had not penetrated farther than the grain on the one side and the outer surface of the flesh on the other; betwixt the grain and outer flesh the skin is white. Had the bark-liquor been strong enough to have tanned it, it wouldn't have tanned the skin into leather, because it was not left in long enough to have it penetrate through the skin.

Q. By your last answer do you refer to such skins only as you treated or saw treated?

(Objected to by plaintiff's counsel.)

A. I do.

Q. Are these skins made into gloves with the grain on, and with the grain on the outside of the glove?

(Objected to by defendants' counsel.)

A. They are.

Q. From the time the defendants built their new shop, (which you say you think was in 1864,) did you work almost entirely in the room in that building, styled by you the staking and finishing-room, up to the time you left their employ?

rooms did it contain; how were these rooms situated in relation to and distance from each other?

A. I think it was about 45 feet square, if I remember right. It contained, I think, three operating-rooms; two of these were in the basement, called the coloring and dressing rooms. The other was the staking and finishing room, on the first floor above ground.

Q. How were the dressing and coloring rooms situated as to each other, and were they or not kept open to each other?

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Q. Were there any facilities for treating skins with fat liquor in the staking-room above?

(Objected to by defendants' counsel.)

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Q. Where was the drum situated in reference to this building you have just been describing?

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Q. Where were the skins that were dressed and egged in that building staked?

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Q. Is there a class of skins in use for gloves in Gloversville and vicinity known as Bevington tans?

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A. Yes, sir.

Q. Is there also a class of skins that are dressed in imitation of Bevington tans?

A. Yes, sir.

Q. If I understand you correctly on your cross-examination, you have dressed and assisted in dressing the latter class?

A. Yes, sir.

Q. Are these in any degree bark-tans?

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(Objected to by defendants' counsel.)

A. Yes, sir, he is.

Q. Please state whether the imported Bevington skins used in Gloversville and vicinity are bark-tanned; and, if not, how they are tanned, judging from your inspection and treatment as you have before stated.

A. The tanning for the color may be done with bark, but the leather is made with alum and salt.

Q. After the application of the bark for the purpose of coloring, as you have described, please state whether the skin in the state in which it then is is leather, or in what is known as the bark-tanned state.

(Objected to by defendants' counsel.)

428 A. The skin is not leather, I should think not, in the bark-tanned state, as that would indicate they were tanned in bark.

On his further cross-examination by defendants' counsel the witness further testified as follows:

Q. Are you able to swear that any of the skins called "Bevington tanned" which you have seen in this country are in fact and imported Bevington-tanned skins?

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(Objected to by plaintiff's counsel.)

A. My determination would be that, where there had been bark enough used to make the color, *that* the leather was produced by the alum and salt.

(Question repeated and objection repeated.)

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Q. By your last answer do you refer to such skins only as you treated or saw treated?

(Objected to by plaintiff's counsel.)

A. I do.

Q. Are these skins made into gloves with the grain on, and with the grain on the outside of the glove?

(Objected to by defendants' counsel.)

A. They are.

Q. From the time the defendants built their new shop, (which you say you think was in 1864,) did you work almost entirely in the room in that building, styled by you the staking and finishing-room, up to the time you left their employ?

(Objected to by plaintiff's counsel.)

A. Yes, sir; I worked principally in that room.

Q. During the time you were in the employ of the defendants, did they have, on their business premises, tubs and other vessels for the purpose of treating skins?

(Objected to by plaintiff's counsel.)

A. Yes, sir.

2d redirect examination:

429 On his further redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Please state whether the skins dressed by the Dodges, in whatever way, while you were with them, were or not afterward staked in the staking-room, described by you, where you worked?

(Objected to by defendants' counsel.)

A. They were.

Q. For what kind of treatment of skins were the tubs and other vessels used to which you referred in your last cross-examination?

A. They were used in nearly all branches in the dressing of kid-leather.

CORNELIUS A. KING.

Taken, subscribed, and sworn this 26th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

FREDERICK S. GREEN, recalled and resworn by and in behalf of plaintiff, testified as follows:

Q. In the defendants' treatment of bark-tanned sheep and lamb skins with fat liquor while you were with them, as stated on your former examination in this suit, please state whether, in case the skins thus treated had been shaved when they got them, they subjected them more than once to the fat liquor.

(Objected to by defendants' counsel.)

A. I don't think they did, after the skins were shaved.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. While in defendants' employ did you treat any skins with fat liquor after they were shaved?

(Objected to by plaintiff's counsel.)

A. I did not.

Q. Who did, so far as you know?

(Objected to by plaintiff's counsel.)

A. Mr. Dodge, sen.

Q. State what was done with the skins next after the first drawing in the fat liquor and being dried?

(Objected to by plaintiff's counsel.)

A. I assisted in carrying bark-tanned skins into the loft after they were dry. I don't know whether they had been treated with fat liquor or not in that state.

Q. Then you don't know how many times they treated the skins with fat liquor after they were shaved, do you?

A. I don't know of their treating them more than once.

Q. Will you swear that they did not?

A. To the best of my knowledge and remembrance, I don't
430 think they treated them more than once after shaving.

Q. Will you swear they did not, or do you mean simply that they did not to your knowledge?

A. There was one lot I assisted in hanging out, and taking them in when dry, and they were staked right out as we had taken them in.

Q. (Question repeated.)

A. I don't think they did generally. Not to my knowledge they did not. They might have treated some more than once, but this lot I helped hang out I am quite sure was treated but once.

Q. Whose skins were the lot you say you are quite sure they treated but once?

A. Daniel B. Judson's team came after them.

Q. When were these treated?

A. It was in the fall of the last year I worked for Dodge; was in 1869 or 1870.

Q. Will you swear positively that this lot of skins that Judson's team came for had not been treated once with fat liquor before the occasion of treating them when you helped hang them out?

A. They might have been treated with fat liquor while being shaved, or for shaving, or put them in order for shaving.

Q. Will you swear positively that this lot of skins had not been treated with fat liquor after being shaved, and before their treatment on the occasion when you helped hang them out?

A. I think I can. The skins were taken, after being shaved, over to a room off from his wood-shed or coal-house, and from there I assisted in taking them to his other shop further east, where he kept a drum for running the skins.

Q. Do you swear positively that this lot of skins had not been treated with fat liquor after being shaved, and before their treatment on the occasion when you helped hang them out?

A. I do.

Q. Did Dodge tan this lot of skins in bark, or were they brought there in the bark-tanned state?

A. I would not be positive whether he tanned them, or whether they were already tanned when they were brought there?

Q. How many were there in this lot?

A. I did not count them.

Q. Can you state about the number?

A. There might have been thirty, thirty-five, or forty dozen.

Q. Did you have anything to do with shaving them?

A. No, sir.

Q. Do you know who did shave them?

A. His hands that he kept there for that business.

Q. Do you know how long they had been shaved before the day you helped hang them out?

A. They were shaved the day before, I think.

Q. Are you positive they were shaved the day before?

A. I am quite positive; yes.

Q. Did you see them shaved?

A. I see them shaving. I think it was this lot of bark-tanned.

Q. Where did you first see this lot of skins on the day you helped hang them out?

A. In a room adjoining the coal-house or wood-shed.

Q. The room sometimes called the driveway?

A. Yes, sir.

431 Q. Were these skins, when you first saw them on that day, in a wet or dry state?

A. They were in a wet state.

Q. Now, sir, do you not know that skins, after being shaved, are always hung out and dried before anything further is done with them?

A. This lot I mention was not; they were run in the drum after shaving.

Q. Was every other lot that you ever knew hung out and dried after shaving before anything further was done with them?

A. After shaving, they were all subjected to this process, as near as I can remember.

Q. What process?

A. Running in the drum or roller I have just mentioned.

On reflection, since the adjournment last evening, I find I was mistaken in saying that this lot of shaved skins went to the shed or driveway for treatment with fat liquor; they went directly from the shaving-shop to the drum, where they were run in the drum, as heretofore stated. I think these were the Judson skins spoken of in my testimony yesterday, but am not positive. The lot of skins that S. Dodge, senior, treated with fat liquor were taken from the loft of his shop in a dry state, and I believe were shaved.

Q. On reflection, are you able to state that the lot of skins mentioned by you yesterday as those that Judson's team came for were treated with fat liquor at all?

A. I did not see them treated with fat liquor.

Q. Are you able to state whether these skins were or were not treated with fat liquor at all?

A. I think they were treated with fat liquor before they were shaved.

Q. Did you see them treated?

A. I did not.

Q. They were taken from the shaving-shop directly to the drum, were they, and you think they had at that time been treated with fat liquor, do you?

A. The lot that I mentioned yesterday were taken directly from the shaving-shop to the drum, and I think they had at that time been treated with fat liquor.

Q. If they had at that time been treated with fat liquor, are you able to state how many times they had been so treated?

A. He generally treated unshaved skins but once. I do not think these were treated more than once.

(Defendants' counsel objects to witness's last answer.)

Q. Do you know whether or not these had been treated more than once?

A. I do not know whether this lot were or were not treated more than once. I cannot be positive whether they were or were not.

Q. Where, when you were in defendants' employ, was their shaving-shop, with reference to the drum?

(Objected to by plaintiff's counsel)

A. They were to the extreme; the other buildings were between or on one side the place where the drum was and the shaving-shop.

432 Q. Was the shaving-shop in the loft or second story of one building, and the drum in a room on the first floor of another building, the distance between the drum and shaving-shop being about one hundred yards?

(Objected to by plaintiff's counsel.)

A. The shaving-shop was on the first floor in entering from the street,

and the drum was in a building on the first floor, about 100 yards from the shaving-shop. In entering from the rear, the shaving-shop is on the second floor, but from the street on the first floor.

Q. After skins had been treated with fat liquor, as you supposed, and then run in the drum, and afterward hung out and dried, were they usually returned to the room called "the splitting-shop?"

(Objected to by plaintiff's counsel.)

A. They were not.

Q. Were they in some instances?

(Objected to by plaintiff's counsel.)

A. I remember no instances.

On his further redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. In your cross-examination this morning you have spoken of a lot of skins, supposed to be Judson's, which went from the shaving process to the drum; also of a lot that were taken from the loft in a dry state and treated with fat liquor. Do you refer to the same or different lots?

A. To different lots, but I think they were both Judson's.

FREDERICK S. GREEN.

Sworn and subscribed this 26th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

AUSTIN E. PORTER, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville. I have resided there nearly 28 years. My age is 60 years past. My business is manufacturing mittens and gloves; have been so engaged in business for about 38 years, 28 years of which was in Gloversville, and the other ten a few miles northeast from there.

Q. Please state whether during that period you have been familiar with the business of manufacturing mittens and gloves in Gloversville and vicinity, and the kinds of leather and stock used for that purpose.

A. I have been familiar.

Q. Please state whether you are connected in business with Alanson Judson; and, if so, how long have you been connected with him?

A. I am at present. I have been in company with him the past
433 year, and previous to that I worked for him for about twenty-five years on a salary.

Q. During that time has Mr. Judson been a manufacturer of mittens and gloves? and, if so, state whether extensively or otherwise.

A. He has, quite extensively.

Q. Before going in company with him as you have stated, were you in charge, as superintendent or foreman, of his manufacturing business?

A. I was, for about twenty years.

Plaintiff's Exhibits Nos. one and two were here shown witness, and the following question asked:

Q. Please state whether Mr. Judson, while you were with him, prior to 1869, made any leather from bark-tanned sheep or lamb skins of the character and quality of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. Not that I ever knew of.

Q. Did you ever see, prior to 1869, in Gloversville or elsewhere, any leather made from bark-tanned sheep or lamb skins, of the character, quality, and fitness for gloves, of the exhibits now shown you?

(Objected to by defendants' counsel.)

A. I did not go to examine, but I saw leather hung up on lines previous to that time, said to have been treated with fat liquor for the purpose of taking the squeak out.

(Plaintiff's counsel moves to strike out the answer of the witness just given as not responsive to the question put, to which defendant, by his counsel, objects.)

Question repeated.

A. I could not tell without examination; I did not examine the leather, and could not tell.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. When first did you see the leather hanging upon lines in Gloversville said to have been treated with fat liquor for the purpose of taking the squeak out, referred to by you on your direct examination?

(Objected to by plaintiff's counsel.)

A. As near as my memory serves me, between the years 1866 and 1868.

Q. Where did you see such leather hanging out?

(Objected to by plaintiff's counsel.)

A. I saw some said to be so treated at I. V. Place's, George Gillette's, and at Russell's, the plaintiff's.

Q. From the time you first saw this class of skins, how frequently after that did you see them in Gloversville up to 1869?

(Objected to by plaintiff's counsel.)

434 A. I saw them every year to the present time.

Q. Did they resemble plaintiff's Exhibits Nos. one and two?

(Objected to by plaintiff's counsel.)

A. I cannot tell; I did not examine them.

Q. Did they in appearance resemble said exhibits?

(Objected to by plaintiff's counsel.)

A. I think not.

Q. Wherein different in appearance?

(Objected to by plaintiff's counsel.)

A. These appeared to be in a finished state, and those did not.

Q. Is that all the difference?

(Objected to by plaintiff's counsel.)

A. All that appears to me at present.

Q. State particularly in what state the skins you saw hanging on the lines, as stated by you, appeared to be at that time, and whether they were in a wet or dry state when you saw them, also whether or not thay had been staked.

(Obected to by plaintiff's counsel.)

A. I have seen them in an apparently wet state and in the drying process, and then apparently dry, not apparently staked.

Q. Is it the staking that gives to such skins a finish in any degree?

(Objected to by plaintiff's counsel.)

A. It is.

Q. Were these skins that you saw hanging out, as stated by you, bark-tanned sheep and lamb skins, having been treated by some liquid or process?

(Objected to by plaintiff's counsel.)

A. Generally when you see skins are hung out in that way, we take it that they have been treated in some way. Sometimes they are hung out

to color. They had the appearance of being bark-tanned sheep and lamb skins. I did not examine them.

Q. You saw them, but did not handle them, I suppose?

(Objected to by plaintiff's counsel.)

A. I think I never handled any of those skins I saw hang out, but once, and that about a year and a half ago.

Q. Where, at Russell's, were the skins hanging out that you saw there between 1866 and 1868?

(Objected to by plaintiff's counsel.)

A. Think it was in his yard, at his place of business; I think it was on Bleecker street at that time.

Q. Judging from the appearance of the skins you saw hanging out at Place's, Russell's, and Gillette's, as mentioned by you, state whether or not, in your judgment, they were then substantially leather of the same character of plaintiff's Exhibits Nos. one and two shown you before such exhibits were staked.

(Objected to by plaintiff's counsel.)

A. I should judge they were.

Q. State whether or not, according to your best recollection, you
435 saw in Gloversville such leather as that you saw at Place's, Russell's and Gillette's at an earlier date than that mentioned by you; and, if so, when first, and where?

A. I do not recollect of seeing any before that.

Q. State, if you know, whether or not for the past fifteen years there has been constant improvements in the dressing of the various kinds of leather used by manufacturers in Gloversville for mittens and gloves, and whether, during that time, such leather has been made better or otherwise.

(Objected to by plaintiff's counsel.)

A. I think there has. I should judge on the whole it was an improvement—made better; have been some failures.

Q. State, if you know, whether or not there has been a yearly increase in the business of manufacturing mittens and gloves in Gloversville and vicinity for the past 20 years; and, if so, your judgment as to the extent of such increase.

(Objected to by plaintiff's counsel.)

A. There has been an increase in the business fifty per cent.

Q. When has the increase been greatest?

(Objected to by plaintiff's counsel.)

A. Since 1861.

On his redirect examination by plaintiff's counsel the witness further testified as follows:

Q. If I understand your cross-examination, the skins you saw hanging out at Place's, Gillette's, and Russell's, you did not handle or examine, but casually saw them when passing as they were hanging out; is that so?

A. That is so.

Q. And you do not know how they had been treated, except by hearsay, do you?

A. No, sir.

Q. By simply seeing skins hanging out, as you saw these, and without an examination, are you able to determine in what way they had been treated; whether by the egg process, fat liquor, oil, or some other process?

A. I am not.

Q. And if they had been treated with fat liquor, could you determine by such casual observation in what condition the fat liquor was when applied to the skins, or whether it was applied alone, or with other ingredients?

A. I could not.

Q. By such observation were you able to determine whether or not the squeak was removed from the leather or skin, and whether it was soft, plump, and suitable for gloves?

A. I was not.

Q. Then you are not able to say that prior to 1869 you ever saw any leather made from bark-tanned sheep or lamb skins, of the character, quality, and fitness for gloves, of the plaintiff's Exhibits Nos. one and two?

(Objected to by defendants' counsel.)

436 A. I cannot, from my recollection, say, but I might have seen it.

Q. Are you willing to swear that you ever did?

(Objected to by defendants' counsel.)

A. I don't positively recollect that I ever did.

Q. During the time you were with Judson, as you have stated, did he cut up bark-tanned sheep or lamb skins in the bark-tanned state for mittens and gloves?

(Objected to by defendants' counsel.)

A. He did.

Q. Please state what improvement has been made during the last fifteen years in the tanning or dressing in what are called oil-dressed skins.

A. Previous to that time we used to scour them in potash and lye, which had a tendency to make them harsh. We now use soda-ash, which has a tendency to open the leather and make it softer.

Q. Please state whether or not Gloversville and vicinity has been the principal place for the manufacture of leather mittens and gloves in the United States since your knowledge of the business.

A. It has.

AUSTIN E. PORTER.

Subscribed and sworn this 27th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

THEODORE WELCH, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville; have resided there about fifty years; I am 64 years of age. At present I am in no business.

Q. Please state whether you have been engaged in the manufacturing and sale of mittens and gloves; and, if so, how long?

A. I have not been manufacturing for the last 20 years, but have been selling them for the past forty years.

Q. Please state whether or not, during that time, you have been familiar with the various kinds of leather and stock used in Gloversville and vicinity for gloves, and the various kinds of mittens and gloves there manufactured and sold.

A. I have been.

Plaintiff's Exhibits Nos. one and two are here shown witness, and the following question asked:

Q. Please state whether, prior to 1869, you ever saw in Gloversville or elsewhere leather made from bark-tanned sheep or lamb skins of

the character, quality, and fitness for gloves of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. I did not.

Q. Were you engaged in the manufacture of mittens and gloves
437 prior to 20 years ago; and if so, how long, and where?

A. I was so engaged in the neighborhood of twenty years in Gloversville.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. Were you sworn and examined as a witness on the part of this plaintiff in a case tried at Utica, in March, 1871, between this plaintiff and one Albert Klein, for an alleged infringement of plaintiff's patent?

A. I was.

Q. While there, giving your testimony, were you shown leather there produced by plaintiff of the kind and character of plaintiff's Exhibits Nos one and two here shown you, and referring to said leather there shown you, did you testify in substance that you had not seen leather of that character until within the last three or four years?

A. I think I did, or gloves, I am not certain which.

Q. Did you also there testify that you bought some gloves made from such leather of Mr. Russell about three years ago?

A. About two or three, I think.

Q. Did you not say "about three years ago?"

A. I might.

Q. What portion of each season for the manufacturing and selling mittens and gloves have you spent in Gloversville for the past 15 or 20 years?

A. Well, I spent the better portion there 8 or 9 months in each year. For 3 or 4 months in each year I have sold mittens and gloves in the country and cities generally from September to January.

Q. Until recently, but few mittens and gloves have been manufactured at Gloversville in the winter season, have they?

A. No, sir.

Q. About how long has that business been carried on to any considerable extent in the winter season, say from about November to April?

A. I should say from 5 to 6 years, maybe longer.

Q. Has there been a large increase in that busines in the last ten years; and, if so, how large?

(Objected to by plaintiff's counsel.)

A. Well, there has been a great many manufacturers done all they could. Not being into it, I cannot state, but should think the business had increased largely.

Q. For how many years last past have you been buying and peddling mittens and gloves on your own account, and what was about the extent of your sales per year?

(Objected to by plaintiff's counsel.)

A. I have been buying and selling on my own account for ten or fifteen years. The extent of my sales varied in that time, sometimes more and sometimes less, from $1,000 to $2,000. The average was from one to two thousand dollars a year.

Q. Before you sold this class of goods on your own account, was
438 your business for ten or fifteen years peddling mittens and gloves for some manufacturer?

A. It was.

Q. You do not mean to testify that leather of the character of plaint-

iff's exhibits here shown you was not made in Gloversville from bark-tanned sheep and lamb skins prior to seven years ago, do you?

A. I mean to testify not any I ever saw.

Q. Then you do not mean to testify that none such was there made before that time?

A. I do not mean to swear there was none such made, but I mean to swear that I never saw any.

Q. You do not claim to have seen or to be familiar with all the different kinds of stock and leather used for the manufacture of gloves at Gloversville, do you?

A. No, sir.

Redirect examination:

On his redirect examination by plaintiff's counsel the witness further testified as follows:

Q. In your evidence at Utica referred to on your cross-examination, when speaking of the gloves purchased of Russell two or three years before and the leather seen by you within the last three or four years, were you inquired of or did you say whether it was equal in quality or fitness for gloves to the Russell specimens produced there?

(Objected to by defendants' counsel.)

A. I think I was, but will not be positive. I said it was not.

Q. Please state whether those gloves purchased of Russell referred to, and the leather so seen by you within the last three or four years, were or were not in fact equal in quality and fitness for gloves to the Russell specimens there produced and Plaintiff's exhibits Nos. one and two, here shown you.

(Objected to by defendants' counsel.)

A. They was not.

Q. Please state whether, during the months you were engaged in selling goods as stated on your cross-examination, you were in Gloversville; and, if so, how often?

A. Well, I was never absent more than from three to five weeks at a time.

Q. Please state whether or not, when in from your trips, you were among manufacturers and saw different classes of goods that were made and sold in Gloversville and vicinity?

(Objected to by defendants' counsel.)

A. I was; and I did.

Q. Please state what opportunities you have had the last twenty years for knowing the different kinds of leather used and the different kinds of goods manufactured in Gloversville and vicinity.

(Objected to by defendants' counsel.)

A. Well, I have been in most all the shops and seen the goods they manufactured and inquired the prices. In some cases I bought some.

Q. Please state whether or not there has been a gradual and
439 constant increase in the glove and mitten business in Gloversville the last 20 or 30 years.

A. There has.

Q. Who did you sell for prior to the time you commenced selling for yourself?

A. I sold for quite a number of different persons. The first I sold was for N. W. Welch, then for Willard J. Heacock, Henry Churchill, Place & Lee, and some few others I don't remember.

Q. Please state whether these persons you have mentioned were or not extensive manufacturers of mittens and gloves.

A. Willard Heacock was, the rest done a lighther business.

On his further cross-examination by defendants' counsel, the witness further testifies as follows:

Q. Do you mean to be understood as testifying that during the 10 or 15 years you sold mittens and gloves on your own account you visited nearly all the places in Gloversville and vicinity where mittens and gloves were manufactured each year, and, if not, how many such places do you think you did visit each year?

A. No; I mean to be understood that I visited quite a number of them, but not all; I might have visited from 10 to 20; may be more.

Q. At the time or times referred to by you in your last answer how many places do you think there were then in Gloversville, where mittens and gloves were manufactured?

A. I think there might from 25 to 50.

Q. How many such places do you think there are there now, or were there five years ago?

(Objected to by plaintiff's counsel.)

A. Think it is double and probably more. There might have been from 50 to 75 five years ago; might be more.

Q. About what amount of goods did you sell per year while selling for Heacock and the other persons mentioned by you?

(Objected by plaintiff's counsel.)

A. From $5,000 to $7,000, perhaps more, possibly less.

Q. Will you testify that on the trial at Utica you testified, in words or in substance, that the gloves you bought of Russell about three years before, or that the skins you had not seen until within the last three or four years, were not as good or suitable for gloves as the Russell skins there shown you, or that any inquiry whatever was there made of you of that nature or character?

A. I swear that I did swear so there, and I swear so now, to the best of my knowledge. To the best of my knowledge there was no such inquiry made.

Q. Are you now able to state from recollection that you did so testify at Utica, or is it your impression merely that you may have done so?

440

A. I think, from the best of my recollection, I did.

Q. Are you positive you did?

A. I would not be positive.

THEODORE WELCH.

Subscribed and sworn this 27th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JONATHAN A. BETTS, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville; have been there since the spring of 1865; am now a segar manufacturer; am 35 years of age.

Q. State whether, in 1866 and 1867, you knew a building in Gloversville, on Main street, two or three doors from the corner of Fulton street, which was afterwards owned by Charles W. Rose?

A. Yes, sir.

Q. State whether you occupied any portion of that building during those two years.

A. Yes, sir; I did, the whole of it.

Q. Please state whether any portion of that building during those two years was used as a mitten and glove laying-off shop?

(Objected to by defendants' counsel.)

A. No, sir.

Q. Was any portion of that building occupied any part of the time during those two years as a billiard-room, and, if so, what portion of it, and what part?

(Objected to by defendants' counsel.)

A. Yes, sir; the up-stairs part. I occupied it as such from January, 1866, to April, 1868.

Q. Was this same portion of the building occupied as a billiard-saloon immediately before your occupancy of it, as you have stated, and immediately after; and, if so, how long before and after?

(Objected to by defendants' counsel.)

A. It was so occupied immediately before, for about a year certainly, but can't say how long, and immediately after for more than a year after I left.

Q. Then, to your knowledge, was it occupied at least a year previously for that purpose?

(Objected to by defendants' counsel.)

A. Yes, sir.

Q. Was it subsequently used as a mitten and glove laying-off shop, and, if so when?

A. Yes; it was so used, either in the latter part of 1869 or 1870; I think it was in 1870.

Q. Please state whether during the time said building was so occupied by you, and the upper part as a billiard-room, there was, to your knowledge, any laying-off mitten and glove shop in its immediate vicinity.

(Objected to by defendants' counsel.)

A. Not to my knowledge, there wasn't.

441 On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. About what is the length of the block in which the building occupied by you as you have stated, is situated; and about how many buildings were on that block on Main street in the years 1865, 1866, 1867, and 1868?

A. I should think probably about two hundred feet, may be more, perhaps not so much; I now think more than that; were some 7 or 8 buildings on Main street.

Q. You do not wish to be understood as testifying that there was not, in the years mentioned in the last question, any place on Main street in that block where the business of laying off mittens and gloves was carried on, do you?

A. I mean to testify that there was no such place to my knowledge.

Q. Will you swear positively that there was not, during such time, any such place there?

A. No, sir; I will not.

On his further redirect examination on the part of the plaintiff, the witness further testified as follows:

Q. You know, do you not, whether there was or was not a laying-off shop, during the years 1866 and 1867, in the building occupied by you?

(Objected to by defendants' counsel.)

A. Yes, I know there was not.

Q. How many doors from Fulton street was the entrance to the building occupied by you as stated?

A. Was the second door then, but the third door now.

Q. State, if you know, what the third-door building from Fulton street was occupied for during those years.

A. A boot and shoe store on the first floor, some of the time; and Jas. Balentine kept what he called a grocery, up-stairs.

JONATHAN A. BETTS.

Subscribed and sworn this 28th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

FRANCIS HEVEY, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville; have resided there since 1856; my age is 49 years; my occupation is kid-dressing.

Q. Please state whether, at any time, you worked for the defendants, the Dodges, or either of them, at Gloversville; and if so, when, and how long; and what was your business?

A. I did work for them; I commenced in 1858, and quit on Christmas day 1861. I worked at different things; colored part of the time, and finished part of the time; I used to chore round a good deal the first year I was there.

442 Q. State whether or not, during the time you were there, you had access to every part of their business premises.

A. Yes, sir; I did.

Q. State whether, to your knowledge, there were any bark-tanned sheep or lamb skins treated with fat liquor on the premises while you was there.

A. As that question is put, I would have to say there was.

Q. State when and by whom.

A. I could not tell the exact year, but should think it was in 1858; I am sure it was in 1858. Done by me and Samuel Dodge, sen.

Q. Please state how and for what purpose.

A. They were taken and put in a tub, and worked in water and fat liquor; they were colored black, for the purpose of changing from a blue to a black; it has that effect.

Q. What do you mean has that effect?

A. Fat liquor.

Q. Were they colored before being put into the fat liquor?

A. Yes, sir; and afterwards.

Q. State, if you know, for what purpose they were put into the fat liquor.

(Ojected to by defendants' counsel.)

A. Well, for making them blacker.

Q. Is that all the bark-tanned sheep or lamb skins that you know of, as being treated with fat liquor while you were there?

A. Yes, sir; that is all, but there were several lots, three or four lots, done in the same way, during that year and the next.

Q. Please state whether the other lots were so treated for the same purpose you have described.

(Objected to by defendants' counsel.)

A. Yes; for the same purpose.

Q. Have you now stated all the bark-tanned sheep and lamb skins treated with fat liquor while you were there, to your knowledge?

A. Yes, I have.

On his cross-examination by defendants' counsel, the witness testified as follows:

Q. During the time you worked for the Dodges as you have stated, did Samuel Dodge, sen., carry on the business of kid-dressing alone, and did you work for him and Samuel Dodge, jr.?

A. I worked for Samuel Dodge, sen., alone.

Q. When you commenced working for Dodge had you any knowledge of the kid-dressing business?

A. No, sir; very little.

Q. Did you have any?

A. Yes, sir.

Q. Had you ever worked at it before.

A. Yes, a little.

Q. During the time you were in the employ of Dodge, after the year you chored it, as you have stated, did you do such work only as you were directed to do from time to time by Mr. Dodge?

A. Of course I did as I was directed.

Q. Did you work at coloring mostly?

A. I did work at coloring most of the time I was there.

Q. Did you work at coloring in a room put up for that purpose,
443 separate from the room where Dodge treated and dressed skins?

A. He never dressed a skin in any other room than the one where I done the coloring from the time I came there to the time I left.

Q. Did Dodge have tubs there in which he treated skins?

A. When he dressed skins he had tubs there.

Q. In what room were these tubs?

A. In the same room where I colored.

Q. Were there none in what was called the beam-shop?

A. That was the beam-shop.

(Question repeated.)

(Objected to by plaintiff's counsel.)

A. There were tubs there where he dressed skins.

Q. How many different rooms did Dodge use at that time for the purpose of kid-dressing?

A. One for kid-dressing and another where he finished and done general work and colored buckskin.

Q. Was there not another room, a small one, off from the beam-shop in which coloring of kid-skins was done?

A. No, sir.

Q. Did Dodge during the time you were with him generally treat the skins he prepared himself, and also prepare the liquor for the treatment of the skins?

A. The two first casks of pickled skins that came there I treated myself, but Mr. Dodge generally treated them himself. When Mr. Dodge was there he did prepare the liquor, but there were others there that prepared it some of the time.

Q. Who?

A. I did myself, Wm. Alcock; Dodge's brother, Charles Dodge, did once—that is all.

Q. What liquor did you prepare?

A. Alum liquor.

Q. Any other?

A. Egg liquor.

Q. Any other?

A. No, sir.

On his redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Where had you worked at the business before working at Dodges'?

A. In Gloversville—for Josiah Farling.

Q. Did you mean to be understood that you worked at choring all your time the first year you were at Dodges'?

A. No, sir.

Q. State about what portion of your time the first year at Dodges' you worked at kid-dressing.

A. Was not much done the first year. I did not work much at kid-dressing the first year—only them two casks. I didn't understand staking, so I didn't stake any.

Q. You speak on your cross-examination of one room used by Mr. Dodge, while you were there, for kid-dressing, and another where he finished and did general work and colored buckskin. Please state how these two rooms were situated in relation to each other, whether adjoining or separate, and, if separate, how far apart.

A. The rooms were adjoining.

Q. Please state whether or not they were open one into the other during business-hours.

A. Was open part of the time—sometimes shut and sometimes
444 open. Sometimes when I was coloring buckskin or oil-leather there I would shut the door on account of the draft.

Q. State whether or not you had free access to the other room.

A. Yes.

Q. In which of the two rooms were the tubs spoken of on your cross-examination situated; in the one where you did the coloring or the other?

A. It was in the room off from where I done the coloring of the oil-leather.

Q. Were they in the room in which the coloring was done by you and Mr. Dodge where the fat liquor was used spoken of on your direct examination?

(Objected to by defendants' counsel.)

A. Yes.

Please state whether the fat liquor used, while you were there, in the coloring process, as you have stated, was applied to the skins in a warm or cold state.

(Objected to by defendants' counsel.)

A. Cold.

Recross-examination:

On his further cross-examination by defendants' counsel the witness further testified as follows:

Q. State what effect, if any, the application of the fat liquor to the bark-tanned skins at Dodges' as stated by you produced upon such skins other than making them of a darker color.

A. It made them softer.

Q. State whether or not it removed the squeak from them.

(Objected to by plaintiff's counsel.)

A. The fat liquor and coloring both did.

Q. Entirely?

(Objected to by plaintiff's counsel.)

A. I believe so.

Q. After these skins were first colored, and before being treated with fat liquor, did they contain squeak?
(Objected to by plaintiff's counsel.)
A. They did.
Q. State, if you know, whether or not the fat-liquor treatment removed the squeak the skins then contained.
(Objected to by plaintiff's counsel.)
A. As I said before, the fat liquor and coloring both did. I don't think the fat liquor alone did. We colored them 3 or 4 times.
Q. Did they contain any squeak after being treated with fat liquor?
(Objected to by plaintiff's counsel.)
A. They did not.
Q. They did immediately before such treatment, did they not?
(Objected to by plaintiff's counsel.)
A. They did.

On his further redirect examination by plaintiff's counsel the witness further testified as follows:

445 Q. How many times before and how many times after the application of fat liquor were they treated with the coloring matter?
A. Once after the fat liquor and twice before.
Q. Were they treated sometimes more than twice before the application of fat liquor?
A. The first lot we colored were treated more than twice with coloring matter before the application of the fat liquor.
Q. When saying on your cross-examination there was no squeak in the skins after the application of fat liquor, do you refer to their condition after drying and staking?
A. Yes, sir.
Q. If I understand you correctly on your cross-examination, you think that it was not the fat liquor alone that had the effect of softening the skins and taking out the squeak, but the fat liquor together with the coloring process. Is it so?
(Objected to by defendants' counsel.)
A. That is my opinion.

Recross-examination:

On his further cross-examination by defendants' counsel the witness further testifies as follows:
Q. State, if you know, what ingredients were used in coloring these skins.
(Objected to by plaintiff's counsel.)
A. The extract of logwood and copperas.

FRANCIS HEVEY.

Subscribed and sworn this 28th day of March, 1873, before me.
J. WENDELL,
Special Examiner.

SAMUEL RICHARDSON, a witness produced, sworn, and examined by and in behalf of the plaintiff, testified as follows:

I reside in Gloversville; have lived there forty years; am sixty-two years old; my occupation is selling gloves and mittens.
Q. Please state whether you have been familiar with the different kinds of leather used for mittens and gloves, in Gloversville, and the different kinds of goods manufactured therefrom, for any length of time; and, if so, how long?

A. I have, and I think I have, perhaps not all, in the neighborhood of forty years.

Q. Please state what opportunities you have had during that time for knowing the different kinds of leather used for gloves and the different kinds of goods manufactured.

A. Well, I will state I have manufactured some myself; I have sold a good many for other parties; bought and sold a good many for myself.

446 Q. Please state whether during that time you have or have not been in the manufacturing establishments of the different persons and firms engaged in that business at Gloversville; and if so, how extensively?

A. I have been in the habit of being in most of them; I mean by that, at certain times, on business.

Plaintiff's Exhibits Nos. 1 and 2 were here shown witness and the following question asked:

Q. State whether you ever saw, in Gloversville or elsewhere, prior to 1869, any leather made from bark-tanned sheep or lamb skins, of the character, quality, and fitness for gloves, of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. That would be a pretty hard question to answer, for this reason, it is too long an answer; well, I have gone into different men's places for the purpose of buying goods; I never had any offered to me as good as these, and don't know as I ever saw any.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. Referring to your last answer on the direct, do you mean to be understood that you have seen leather in Gloversville of the same general character as the exhibits here shown you, made from bark-tanned sheep and lamb skins, prior to 1869; but none quite so good as said exhibits?

A. I have seen gloves made from bark-tanned skins, prior to 1869, but none as good as the samples shown me here.

Q. Bark-tanned skins treated with fat liquor?

A. I don't know how they were treated.

Q. Bark-tanned skins treated in some way, and rendered soft, and the squeak removed?

A. I never had any much to do with bark-tanned goods; never sold but very few.

Q. Did you, prior to 1869, see gloves that were made in Gloversville from bark-tanned sheep and lamb skins, treated in some way, and of the same general character of the plaintiff's exhibits here shown you, but not quite so good?

A. I have seen gloves made from bark-tanned skins; looked like these, but not as soft or pliable.

Q. State as near as you are able when first you saw such.

A. I don't know how to answer that question. I can't do it; I can say I have seen good for years, similar in color, made of sheep-skins, but can't say how many.

Q. State as near as you can.

A. I cannot. It is something I have not thought of; it may be from two to ten years.

Q. Do you mean from two to ten years before 1869?

A. When I said from two to ten years, I had reference from the present.

Q. Can you testify that you did not see such goods in Gloversville ten years prior to 1869?

A. No, sir.

447 Q. You do not mean to be understood as testifying that leather made from bark-tanned sheep and lamb skins, of the kind, quality, and suitableness for gloves, as plaintiff's exhibits here shown you, was not made in Gloversville, and the same there made into gloves, for ten years prior to 1869, do you?

A. I don't know whether they were or not.

(Question repeated.

Objected to by plaintiff's counsel.)

A. I don't mean to swear that there was none made there prior to that.

(Question repeated.

Objected to by plaintiff's counsel.)

A. I supposed I had answered that. I don't know how to answer it any better.

Q. Will you swear that, for the ten years prior to 1869, leather of the kind, quality, and suitableness for gloves as plaintiff's exhibits was not made from bark-tanned sheep and lamb skins in Gloversville?

(Objected to by plaintiff's counsel.)

A. I will not.

Q. When in your testimony you stated, in substance, that you had seen gloves made from bark-tanned sheep and lamb skins of the color of the plaintiff's exhibits here shown you, for from two to ten years, did you have reference to bark-tanned sheep and lamb skins made soft and the squeak removed from them by some treatment?

(Objected to by plaintiff's counsel.)

A. I had reference to their being made from bark-tanned sheep and lamb. I don't think I ever saw any that the squeak was entirely removed till within a very few years.

Q. From bark-tanned skins in the bark-tanned state without softening?

A. I don't know how to answer that question. I say they were soft enough to put on to your hand. I don't know how they were made so.

Q. Are you acquainted with bark-tanned sheep and lamb skins in the bark-tanned state?

A. I have seen a great many in that state.

Q. Were the goods referred to by you made from such skins in the bark-tanned state, or had the skins, after being in the bark-tanned state, been treated in some way and made soft before being made into gloves?

A. They were made from bark-tanned skins, but how they had been treated I don't know.

Q. I do not ask you how they had been treated, but want you to state whether or not, after being in the bark-tanned state, they had been treated in any manner and made soft before being made into gloves.

A. They were soft enough so you could put them on your hands, but I don't know how they were made so.

Q. Softer than when in the bark-tanned state?

A. I think they were.

Q. Suitable for gloves?

A. They would answer for a cheap glove.

Q. (Question repeated.

Objected to by plaintiff's counsel.)

A. They were not good gloves.
Q. Why not?
A. They were not as soft and pliable as they make them now.
448 Q. Is that the only difference between these and those now made, that those now made are more soft and pliable?
A. I don't think that is all the difference.
Q. Where in Gloversville did you first see gloves made from bark-tanned sheep and lamb skins rendered soft by some treatment?
(Objected to by plaintiff's counsel.)
A. I could not state in whose shop I saw them first.
Q. Mention all the different places where you had seen them prior to 1869?
(Objected to by plaintiff's counsel,)
A. I think I saw them at George Gillette's. I have seen them in the hands of different parties who had purchased them. I did not go round to the shops for the purpose of buying any. I have seen them with different dealers in New York.
Q. For how many years prior to 1869?
(Objected to by plaintiff's counsel.)
A. I am not going to undertake to say how many.
Q. Will you say it was not as many as six years before 1869?
(Objected to by plaintiff's counsel.)
A. I will not.
Q. If you ever saw gloves made from bark-tanned sheep and lamb skins made soft at Mr. Russell's, the plaintiff's, state when first you saw them there.
(Objected to by plaintiff's counsel.)
A. I don't remember that I ever saw any there.

SAMUEL RICHARDSON.

Subscribed and sworn this 28th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JAMES BROWNELL, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your age, residence, and business.
A. Will be 42 years old next May. I reside in Gloversville. My business is manufacturing gloves and mittens.
Q. State how long you have resided in Gloversville and vicinity.
A. All my life-time.
Q. Please state whether you have been for any time familiar with the different kinds of leather used for gloves in Gloversville and vicinity, and the different kinds and classes of goods there made; and, if so, how long.
A. Yes, sir; I am familiar with the kind of goods there made, and have been quite familiar for the last ten years with manufactured goods. I have been familiar with the kinds of leather used for gloves there.
449 Plaintiff's Exhibits Nos. one and two are here shown witness, and the following questions asked:
Q. Please state whether prior to 1869, in Gloversville or vicinity, you ever saw any leather made from bark-tanned sheep or lamb skins of the character, quality, and fitness for gloves, of the exhibits now shown you.
(Objected to by defendants' counsel.)
A. No, sir; I never did; never seen any.

A. When I said from two to ten years, I had reference from the present.

Q. Can you testify that you did not see such goods in Gloversville ten years prior to 1869?

A. No, sir.

447 Q. You do not mean to be understood as testifying that leather made from bark-tanned sheep and lamb skins, of the kind, quality, and suitableness for gloves, as plaintiff's exhibits here shown you, was not made in Gloversville, and the same there made into gloves, for ten years prior to 1869, do you?

A. I don't know whether they were or not.

(Question repeated.

Objected to by plaintiff's counsel.)

A. I don't mean to swear that there was none made there prior to that.

(Question repeated.

Objected to by plaintiff's counsel.)

A. I supposed I had answered that. I don't know how to answer it any better.

Q. Will you swear that, for the ten years prior to 1869, leather of the kind, quality, and suitableness for gloves as plaintiff's exhibits was not made from bark-tanned sheep and lamb skins in Gloversville?

(Objected to by plaintiff's counsel.)

A. I will not.

Q. When in your testimony you stated, in substance, that you had seen gloves made from bark-tanned sheep and lamb skins of the color of the plaintiff's exhibits here shown you, for from two to ten years, did you have reference to bark-tanned sheep and lamb skins made soft and the squeak removed from them by some treatment?

(Objected to by plaintiff's counsel.)

A. I had reference to their being made from bark-tanned sheep and lamb. I don't think I ever saw any that the squeak was entirely removed till within a very few years.

Q. From bark-tanned skins in the bark-tanned state without softening?

A. I don't know how to answer that question. I say they were soft enough to put on to your hand. I don't know how they were made so.

Q. Are you acquainted with bark-tanned sheep and lamb skins in the bark-tanned state?

A. I have seen a great many in that state.

Q. Were the goods referred to by you made from such skins in the bark-tanned state, or had the skins, after being in the bark-tanned state, been treated in some way and made soft before being made into gloves?

A. They were made from bark-tanned skins, but how they had been treated I don't know.

Q. I do not ask you how they had been treated, but want you to state whether or not, after being in the bark-tanned state, they had been treated in any manner and made soft before being made into gloves.

A. They were soft enough so you could put them on your hands, but I don't know how they were made so.

Q. Softer than when in the bark-tanned state?

A. I think they were.

Q. Suitable for gloves?

A. They would answer for a cheap glove.

Q. (Question repeated.

Objected to by plaintiff's counsel.)

A. They were not good gloves.

Q. Why not?

A. They were not as soft and pliable as they make them now.

448 Q. Is that the only difference between these and those now made, that those now made are more soft and pliable?

A. I don't think that is all the difference.

Q. Where in Gloversville did you first see gloves made from bark-tanned sheep and lamb skins rendered soft by some treatment?

(Objected to by plaintiff's counsel.)

A. I could not state in whose shop I saw them first.

Q. Mention all the different places where you had seen them prior to 1869?

(Objected to by plaintiff's counsel,)

A. I think I saw them at George Gillette's. I have seen them in the hands of different parties who had purchased them. I did not go round to the shops for the purpose of buying any. I have seen them with different dealers in New York.

Q. For how many years prior to 1869?

(Objected to by plaintiff's counsel.)

A. I am not going to undertake to say how many.

Q. Will you say it was not as many as six years before 1869?

(Objected to by plaintiff's counsel.)

A. I will not.

Q. If you ever saw gloves made from bark-tanned sheep and lamb skins made soft at Mr. Russell's, the plaintiff's, state when first you saw them there.

(Objected to by plaintiff's counsel.)

A. I don't remember that I ever saw any there.

SAMUEL RICHARDSON.

Subscribed and sworn this 28th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JAMES BROWNELL, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your age, residence, and business.

A. Will be 42 years old next May. I reside in Gloversville. My business is manufacturing gloves and mittens.

Q. State how long you have resided in Gloversville and vicinity.

A. All my life-time.

Q. Please state whether you have been for any time familiar with the different kinds of leather used for gloves in Gloversville and vicinity, and the different kinds and classes of goods there made; and, if so, how long.

A. Yes, sir; I am familiar with the kind of goods there made, and have been quite familiar for the last ten years with manufactured goods. I have been familiar with the kinds of leather used for gloves there.

449 Plaintiff's Exhibits Nos. one and two are here shown witness, and the following questions asked:

Q. Please state whether prior to 1869, in Gloversville or vicinity, you ever saw any leather made from bark-tanned sheep or lamb skins of the character, quality, and fitness for gloves, of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. No, sir; I never did; never seen any.

Q. Please state whether, prior to 1869, gloves and mittens were made from bark-tanned sheep and lamb skins, in the bark-tanned state, in Gloversville and vicinity.

A. They were.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. Are you able to say that leather of the kind, quality, and fitness for gloves, of plaintiff's exhibits here shown you, was not made in Gloversville from bark-tanned sheep and lamb skins, and such leather there made into gloves for at least ten years prior to 1869?

A. I never see any.

Q. I do not ask you if you have ever seen any, but desire to know whether you are able to state that none such was made and made into gloves for at least ten years prior to 1869.

A. I am not able to state that there was not.

Q. You do not claim to have seen all the different kinds of leather made into gloves, in Gloversville, during the past ten or fifteen years, do you?

A. There may have been batches of skins that I have not seen, but I claim to be familiar with all the different kinds of leather manufactured there, but I may not have seen it all.

Q. Do you mean to be understood as swearing that you have seen all the different kinds of leather prepared for gloves in Gloversville, for the past fifteen years?

A. No, sir; I don't wish to be understood in that way.

Q. Do you understand that the number of skins prepared for and made into mittens and gloves in Gloversville, per year, is about three million skins?

(Objected to by plaintiff's counsel.)

A. I have never heard it estimated.

J. H. BROWNELL.

Subscribed and sworn this 29th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

DVAID H. CUYLER, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your age, residence, and business.

450 A. My age is 56 years; my residence is in Gloversville; my business is—I am foreman in a glove-shop.

Q. If you have been familiar with the glove and mitten manufacturing business in Gloversville and vicinity, and the kinds of leather used therein, and the goods made, please state how long.

A. In the manufacturing part, I commenced in 1857; I commenced in Johnstown. From 1838 to 1857, I was a leather-dresser; run a mill in Johnstown.

Q. Please state whether, for any length of time, you have or have not been familiar with the different kinds of leather used in the manufacture, and the different kinds of goods made; and, if so, how long?

A. I was not from June, 1862, to the fall of 1864, as I was in the Army. The last eight years I have been familiar with manufacturing.

Q. For the last eight years have you or have you not been familiar with the different kinds of leather, and the goods manufactured therefrom?

(Objected to by defendants' counsel.)

A. I have been.

Q. And were you for any length of time prior to your going to war; and, if so, for how long?

(Objected to by defendants' counsel.)

A. I was for three years.

Q. Please state whether prior to 1869 you made up any gloves or mittens from bark-tanned sheep or lamb skins, in the bark-tanned state, for the Churchills, in Gloversville, or either of them; and, if so, when, and how many?

(Objected to by defendants' counsel.)

A. I did for C. Hutchinson & Co., of which Henry Churchill was a partner. It was in the fall of 1861 and spring of 1862. Think there were about two hundred dozen of gauntlets and gloves; made no mittens.

Q. What kinds of gloves?

(Objected to by defendants' counsel.)

A. They were button-top gloves, we call them.

Q. About what proportion were made into button-tops, and what proportion into gauntlets?

(Objected to by defendants' counsel.)

A. About one-third were made into button-tops.

Q. If you were requested or attempted to make them all into button-tops, and there was any reason connected with the character of the leather, why you did not do so, please state the reason.

(Objected to by the defendants' counsel.)

A. The leather was not sufficiently soft.

Q. Please state whether Hutchinson & Co. desired them to be made into button-tops.

(Objected to by defendants' counsel.)

A. They did.

451 Plaintiff's exhibits were here shown witness, and the following question asked:

Q. Please state whether, prior to 1869, you ever saw in Gloversville or vicinity any leather made of bark-tanned sheep or lamb skins, or goods made from such leather of the character, quality, and fitness for gloves, of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. I did not.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. State whether, in the latter part of 1861 and in 1862, there was or was not an unusually great demand for all kinds of gloves and *guantlets* in Gloversville and vicinity, for use in the Army.

A. There was.

Q. In order to supply such demand, were all kinds of skins hurriedly made into gloves and gauntlets in Gloversville and vicinity very imperfectly dressed and prepared?

(Objected to by plaintiff's counsel.)

A. They were.

Q. State whether, during that time, in order to meet such demand, pickled fleshers were or were not taken from the brine, and without any dressing, were washed out, dried and staked and made into gloves.

(Objected to by plaintiff's counsel.)

A. I never saw any done, never saw any of the goods, but heard they were.

(Plaintiff's counsel moves to strike out the last clause of witness's last answer in addition to his above objection.)

Q. You do not wish to be understood as testifying that you have either seen or are familiar with all the different classes and kinds of leather prepared for and made into gloves at Gloversville, for the past ten years, or before that time, do you?

A. I do not.

Q. You do not mean to be understood as testifying that there was not, prior to 1869, leather of the kind, character, and fitness for gloves of plaintiff's exhibits here shown you, made from bark-tanned sheep and lamb skins in Gloversville and vicinity, and there made into gloves, do you?

A. I do not.

Q. Since you returned from the war and have acted as foreman in a glove-manufacturing house in Gloversville, has such a house made staple and heavy goods generally?

A. We make all kinds of goods. We make staple goods, and a general assortment.

Q. If there has been any increase in the mitten and glove business in Gloversville and vicinity within the past ten years, state as well as you are able the extent of such increase.

(Objected to by plaintiff's counsel.)

452 A. I should think now about four times as much as ten years ago. There has been a yearly increase.

DAVID H. CUYLER.

Subscribed and sworn this 29th day of March, 1873, before me.

J. WENDELL,
Special Examiner.

HIRAM FREEMAN, a witness produced, sworn, and examined by and in behalf of plaintiff, testified as follows:

Q. Please state your residence, age, and business.

A. My age is 35 years; residence in Mayfield; my business is skin-dressing.

Q. Please state whether at any time you worked for P. C. and D. G. Heacock, in Kingsboro', in their manufacturing business; and, if so, when and how long.

A. I did work there. I commenced in 1858, and worked there most of the time for six years.

Q. State whether you had access to all their business premises.

A. I had access to all parts of the shop I worked in; was all through it.

Q. Was that the shop where Philander Heacock worked?

A. Yes, sir.

Q. Please state whether, during the time you were there, they treated any bark-tanned sheep or lamb skins with fat liquor, to your knowledge?

(Objected to by defendants' counsel.)

A. They did not to my knowledge.

Q. Please state whether they treated any bark-tanned skins with eggs or Castile soap?

(Objected by defendants' counsel.)

A. They had skins there they used soap on and eggs. I call them bark-tanned.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. When with the Messrs. Heacock, as you have stated, what were you usually employed in doing?

A. I staked, and cut, and laid off.

Q. Did you simply do such work as you were directed to do, without having any general superintendence of their business?

A. Yes, sir.

Q. You do not mean to be understood as testifying that they did not, when you were with them, treat bark-tanned sheep and lamb skins with fat liquor, to make such skins soft and remove the squeak, do you?

(Objected to by plaintiff's counsel.)

A. No, sir.

Q. Referring to the skins which you say they treated with Castile soap and eggs, were such skins what are known as cape sheep?

453 A. I could not swear; all I know they called them bark-tans. What kind of sheep I could not say.

HIRAM FREEMAN.

Subscribed and sworn this 29th day of March, before me.

J. WENDELL,
Special Examiner.

Adjourned to Monday, March 31, at 10 a. m.

PHILO EARL, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your age, residence, and business.

A. I am 50 years of age. I reside in the town of Broadalbin, village of Fonda's Bush, in this county. My business is cutting gloves.

Q. Do you know James L. Northrup, formerly of Fonda's Bush; and, if so, how long have you known him?

A. I do know him; have known him since 1856.

Q. Please state whether, in 1856, you dressed leather for him for the manufacture of mittens and gloves.

A. I did.

Q. Please state whether, in the year 1857 and 1858, you were frequently in his manufacturing establishment in Fonda's Bush, and whether you purchased mittens or gloves of him during those years.

A. I was in his manufacturing establishment frequently during those years, and also purchased gloves of him during the same time.

Q. Please state whether, in either of the years mentioned, you saw any leather, mittens, or gloves in his establishment or possession, made from bark-tanned sheep or lamb skins which had been softened otherwise than by staking.

A. No, sir.

Q. Did you at any time during those years see any goods made by him from bark-tanned sheep or lamb skins in the bark-tanned state?

A. I did.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. What portion of the year 1856 were you in the employ of Mr. Northrup?

A. About four months in 1856.

Q. When did you begin and when did you end such employ in 1856?

A. If my memory serves me right, I began about in September, 1856, and quit about the first of January following.

Q. Where did you do this work for Mr. Northrup that you refer to?

A. In the town of Broadalbin.

Q. At whose shop or place of business did you do it?

A. The mill belonged to Benjamin Chase, and it was at that mill I done the work.

Q. How far was that mill of Mr. Chase's from Mr. Northrup's place of business at that time?

A. About 80 rods, I should think.

Q. Were you carrying on business for yourself at Mr. Chase's mill?

454 A. I was.

Q. And these skins that you refer to as having treated for Mr. Northrup were taken there by him to be treated for him by you, were they?

A. They were.

Q. You were, at the same time you were doing this work for Mr. Northrup, doing other work yourself and for other parties, that was brought to you, were you not?

A. Yes, sir.

Q. How many different lots, if more than one, did you do or treat for Mr. Northrup in the year 1856?

A. One lot in 1856.

Q. Of how many did this lot consist, and in what month was it treated?

A. Were two thousand skins in the lot; we did not get them all through in 1856.

Q. What did you do to them?

A. I dressed them all the way through, ready for cutting into gloves.

Q. In what condition were the skins when you took them, and what kind of skins?

(Objected to by plaintiff's counsel.)

A. Were in a raw state; were western skins.

Q. Deer-skins, or bark-tanned sheep and lamb skins?

A. Deer-skins.

Q. Was your treatment what is called oil-dressing?

A. Yes, sir.

Q. You cannot testify of your own knowledge, can you, whether Mr. Northrup did or did not soften bark-tanned sheep and lamb skins by treating them with fat liquor in 1856?

A. I cannot.

Q. How many times, do you now remember, so that you can make oath to them, were there, that you was in Mr. Northrup's place of business in 1857 and 1858?

A. I was in there a good many times.

Q. Please state the first time in 1857 or 1858, that you now distinctly remember, so that you can make oath to it?

A. I can't give you the date of it.

Q. Please state any one time, either in 1857 or 1858, that you now distinctly remember, that you were in Mr. Northrup's place of business, so that you can now make oath to it?

A. I cannot give the dates, but was probably in there fifty times during 1858.

Q. What was your business in 1857 and 1858?

A. Dressing deer-skins and manufacturing mittens and gloves.

Q. You attended your own business instead of other people's, did you not?

(Objected to by plaintiff's counsel.)

A. I attended both.

Q. Where?

A. At Broadalbin.

Q. Where was your place of such business?

A. What they call Chase's Hollow, near the village of Fonda's Bush.

Q. Which of the years 1856, 1857, or 1858 did you purchase mittens and gloves of Mr. Northrup?

A. In the fall of 1858.

Q. How many?

A. I can't give you the number of dozen.

Q. State as nearly as you can the number, and what kind were they?

A. I don't know how near I come to the number; was but about five hundred dollars' worth; were different kinds.

Q. What kinds?

455 A. Bark-tanned harvest mittens.

Q. Did you ever know the leather for bark-tanned harvest-mittens to be softened with fat liquor?

A. I did.

Q. When and where?

A. About three years ago; first saw it in Gloversville.

Q. Do you not know that such leather for that kind of goods is not usually dressed with fat liquor?

A. I think it ain't dressed usually in that way.

Q. Can you make oath that leather which you do not see treated has never been softened otherwise than by staking?

A. I don't know as I can.

Q. You cannot swear positively, can you, how leather has been treated unless you treat it yourself or see it treated?

A. Some kinds I might tell how it had been treated.

Q. Question repeated.

A. Some kinds I can, and some kinds I can't.

Q. Do you mean to be understood that you can swear positively to a thing you do not know of your own knowledge?

(Objected to by plaintiff's counsel.)

A. I do not mean to be understood as swearing to a thing positively that I don't know.

On his redirect-examination witness testified as follows:

Plaintiff's Exhibits Nos. one and two were here shown witness, and the following questions asked:

Q. Are you able to tell by inspection of these exhibits whether they have been treated and softened from the bark-tanned state by any process other than staking?

(Objected to by defendants' counsel.)

A. No, sir; I cannot tell.

Q. Please state whether during these years spoken of you saw in Mr. Northrup's possession any leather made from bark-tanned sheep or lamb skins of the character and quality of the exhibits now shown you.

(Objected to by defendants' counsel.)

A. I did not.

Q. Please state whether the bark-tanned leather referred to on your cross-examination, made into harvest-mittens, would or would not have

been more valuable for glove or mitten purposes if softened and prepared like the exhibits now shown you.

A. It would.

Q. During the years 1856, 1857, and 1858, how many mitten and glove manufacturing establishments were there in Fonda's Bush?

(Objected to by defendants' counsel.)

A. Three or four; may have been five.

Recross-examination:

On his further cross-examination by defendants' counsel the witness further testified as follows:

456 Q. Do you or do you not know that bark-tanned sheep and lamb skins are more valuable for harvest-mittens without softening them as those exhibits now shown you than with such softening?

A. I think they are not.

Q. Do you not know that they are more durable for harvest-mittens without such softening than with?

A. I think they are not.

Q. You do not mean to testify, do you, that you saw all the leather or goods made therefrom in Mr. Northrup's place of business during these years spoken of?

A. No, sir.

Q. When first, if ever, did you see harvest-mittens made of bark-tanned sheep and lamb skins softened like the exhibits shown you?

(Objected to by plaintiff's counsel.)

A. I think about three or four years ago, if I remember.

Q. Do you mean to swear that harvest-mittens made of such leather, softened like those exhibits, are made and in the market to any considerable extent?

A. I can't swear how many are made.

Q. How many such mittens made of such leather of the quality and softness of such exhibits are you willing to swear you have ever seen, and where did you see them, and who manufactured them, if you know?

(Objected to by plaintiff's counsel.)

A. I can't tell how many; may not have seen more than one dozen, and may have seen fifty. I don't remember where I saw them; can't tell; cannot tell who manufactured them.

Q. In your judgment is not leather of the softness and quality and suitableness for gloves, as the exhibits before you, much more valuable for gloves than for harvest-mittens?

(Objected to by plaintiff's counsel.)

A. I should think they would be.

PHILO EARL.

Subscribed and sworn this 31st day of March, 1873, before me.

J. WENDELL,
Special Examiner.

JAMES NEWTON, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

I reside in the town of Broadalbin, in the village of Fonda's Bush; my age is 50 years; my business is manufacturer of gloves and mittens.

Q. Were you a resident of Fonda's Bush from the years 1854 to 1858, inclusive?

A. Yes, sir; I was.

Q. Did you, during that time, know James L. Northrup, and did you during any of those years dress any skins for him?

A. Yes, sir; I knew him, and I did dress skins for him in 1855.

Q. Were you at different times during those years on his prem-
457 ises where he carried on the manufacture of gloves and mittens?

A. I presume I was.

(Plaintiff's exhibits Nos. one and two were here shown witness, and the following question asked:)

Q. Please state whether you saw during that period, on his premises or in his possession, any leather or goods made from bark-tanned sheep or lamb skins of the character and quality of the exhibits now shown you.

A. I don't know as I did.

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. Can you now swear positively that you never did see on Mr. Northrup's premises or in his possession, during those years, leather, or goods made therefrom, of substantially the same character and quality as the exhibits now shown you?

A. No, sir; I don't swear that I never did, positively; I can't; it is too long ago to be positive about it.

Q. Can you now testify positively that Mr. Northrup did not have during those years or some part of them large quantities of leather like such exhibits or goods made therefrom?

A. I cannot.

Q. Where, in whose shop, did you dress the goods for Mr. Northrup in 1855, mentioned on your direct examination?

A. In Broadalbin. The mill was built by James L. Northrup and Timothy Cornwell, and leased to me, and occupied by me at the time.

Q. What kind of skins and what quantity did you so do for Mr. Northrup?

A. Were deer-skins; I can't tell the quantity, because I was dressing for others the same time as well as for myself.

Q. How frequently were you in Mr. Northrup's place of business during those years?

A. Not frequently; I can't tell how often.

Q. How far was this mill occupied by you from Mr. Northrup's place of business at the time you did this work for him in 1855?

A. I should judge thirty rods.

On his redirect examination by plaintiff's counsel the witness further testified as follows:

A. Are you a relative by marriage of Mr. Northrup?

(Objected to by defendants' counsel.)

A. I am told our wives are cousins; if that constitutes relation, we are relatives.

JAMES NEWTON.

Sworn and subscribed this 31st day of March, 1873, before me.

J. WENDELL,
Special Examiner.

458 GEORGE W. GILLETTE, a witness reproduced, resworn, and further examined on the part of the plaintiff, further testifies as follows:

(Plaintiff's exhibit No. nine was now shown witness, and the following question asked:)

Q. Please state whether Exhibit No. nine now shown you, and in reference to which you gave some testimony on your previous examination in this case, has been staked under your eye since such examination; and, if so, by whom and when?

(Objected to by defendants' counsel.)

A. It has been so staked by Mr. Shutts, I think, last Monday, a week ago to-day.

Q. Please state the character of that staking, whether thorough or otherwise.

(Objected to by defendants' counsel.)

A. It was very thoroughly staked widthways and lengthways.

Q. Please state whether Mr. Shutt is a staker.

(Objected to by defendants' counsel.)

A. He is a good staker.

Q. Is the squeak out of that skin?

(Objected to by defendants' counsel.)

A. It is not.

Q. Please state whether, in your judgment, the squeak could be removed from that skin by staking.

(Objected to by defendants' counsel.)

A. It could not by simple staking.

(Defendants' counsel now moves to have all the evidence of this witness, on this and on his former examination, relating to this Exhibit No. nine, *be* stricken out generally, and especially on the ground that the exhibit has been taken from the custody of the examiner and operated upon since the former evidence was given.)

Q. State whether this skin is or is not in the same condition as it was on the occasion of your examination when you gave evidence in relation to it, except the staking.

A. It is.

(Defendants' motion renewed.)

On his cross-examination by defendants' counsel the witness further testified as follows:

Q. De bene. Please state whether or not said Exhibit No. 9 was dampened down, or otherwise, before the staking you have mentioned?

A. It was not.

Q. In dressing and finishing bark-tanned sheep and lamb skins, is it not usual to dampen them down, or otherwise, before staking?

I have not done so lately. I used to do so. I do not know the custom of others.

Q. Have you not generally damped the skins before staking when it was not in a dampened condition itself, and when it was as dry as said exhibits?

A. Not latterly; I used to dampen them, but do so no more.

459 Q. In your judgment, assuming bark-tanned sheep or lamb skins to be dry, in the bark-tanned state, and rolled, would it be a right and proper method of staking to stake such skins without dampening them down, or otherwise?

(Objected to by plaintiff's counsel.)

A. If I were to do the job, I should dampen them.

Q. Then the reason that you do not latterly dampen down your bark-tanned sheep and lamb skins before staking is because they had been

previously treated with fat liquor or some other process to soften them, is it not?

A. I don't think it is.

Q. Are you latterly accustomed to stake bark-tanned sheep and lamb skins in the bark-tanned state dry, without having been softened by some process?

A. I am not accustomed at all to stake them in the bark-tanned state.

Redirect examination:

On his redirect examination by plaintiff's counsel the witness further testified as follows:

Q. Please state whether this Exhibit No. 9 was staked in the same manner that you stake your bark-tanned sheep and lamb skins treated by the Russell process, or differently?

(Objected to by defendant's counsel.)

A. It was staked in the same manner.

Q. Please state whether in your judgment, assuming a bark-tanned sheep or lamb skin to be dry, in the bark-tanned state, and rolled, dampening it down in the ordinary mode of dampening for staking purposes and staking would remove the squeak?

(Objected to by the defendant's counsel.)

A. It certainly would not.

Q. Please state whether, in your judgment, if this exhibit had been dampened down previous to staking, in the ordinary mode of dampening down skins for staking purposes, and then staked, the squeak would have been removed?

A. It would not.

Q. Referring to your cross-examination, where you say in substance "that you would dampen a dry, bark-tanned, rolled skin for staking," please explain why?

(Objected to by defendant's counsel.)

A. Because it would break up easier and stake easier and make it work easier; would have no other effect upon it.

GEORGE W. GILLETTE.

Subscribed and sworn before me this 31st day of March, 1873.

J. WENDELL,
Special Examiner.

460 WILLIAM SHUTT, a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your residence and business.

A. I reside in Gloversville. I am a staker; that is my business.

(Plaintiff's exhibit No. 9 was now shown witness, and the following question asked:)

Q. Please state whether you staked the exhibit now shown you in presence of George W. Gillette?

(Objected to by defendants' counsel.)

A. I did.

Q. State whether you staked it thoroughly or otherwise?

(Objected to by defendants' counsel.)

A. It was thoroughly staked.

Q. Are you in the employ of George W. Gillette as a staker; and, if so, please state whether this Exhibit No. 9 was staked in the same manner Mr. Gillette stakes his bark-tanned sheep and lamb skins, or differently?

(Objected to by defendants' counsel.)

A. I am in Mr. Gillette's employ as staker, and this exhibit was staked in the same manner as Mr. Gillette staked his bark-tanned sheep and lamb skins.

Q. State whether the squeak is or is not out; and, if not, whether, in your judgment, it could be taken out by staking.

(Objected to by defendants' counsel.)

A. The squeak is not out; it could not be taken out by staking.

Q. Please state whether, by dampening it down before staking, in the ordinary mode of dampening down skins for staking purposes, and then staking as you staked it, the squeak would have been removed.

(Objected to by defendants' counsel.)

A. It would not.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. What is your age, and where was this staking done, referred to in your direct examination?

A. I am 26 years of age; the staking was done at Geo. W. Gillette's shop in Gloversville.

Q. Who took the skins there to be staked?

A. Mr. Gillette handed it to me, but don't know who brought it to the shop.

WM. SHUTTS.

Subscribed and sworn this 31st day of March, 1873, before me.

J. WENDELL,
Special Examiner.

461 CHARLES H. PORTER a witness produced, sworn, and examined by and on behalf of the plaintiff, testified as follows:

Q. Please state your residence and profession.

A. My present residence is the city of Albany. I am a physician and chemist.

Q. Have you examined the patent and specifications in question here?

A. I have.

Q. Please state whether you have made tests and experiments in relation to fat liquor and the processes described in the patent; and, if so, at whose request.

A. I have made those tests and experiments at the request of N. C. Russell and I. V. Place.

Q. Please state the object and effect of tanning skins, and the principal methods in use for that purpose.

(Objected to by defendants' counsel.)

A. The object and effect of tanning skins is to bring them into a state in which they are not readily affected or injured by exposure to air and moisture. The principal methods for tanning skins are, by the action of the active principle of various barks, and by oils.

Q. Please state the difference, if any, between the bark and the oil tanning, in reference to action, combination, and result.

(Objected to by defendants' counsel.)

A. In the first place, there is a great difference in the nature of the principles used in the two cases. In the one case, the tan'ic acid, the active principle of the various barks, is a definite chemical compound, which has a great affinity for various substances, basic and neutral,

and forms with them chemical compounds having a definite composition. On the other hand, the oils form definite compounds only with basic substances. The product produced by the treating of skins with tan'ic acid is a chemical compound, while *that* the substance produced by treating skins with oils is a physical compound, being, so far as I know, no chemical compound, strictly speaking. The product in the two cases differ in composition and physical properties.

Q. If your answer already given does not cover the ground, please state whether the combination formed and the product in composition and properties are the same or different when fat liquor is applied to bark-tanned skins and skins that have been tanned in the raw in oil.

(Objected to by defendants' counsel.)

A. I would state that the product in the two cases differ in composition and properties.

Q. Suppose a skin treated with oil from the raw, but imperfectly tanned or scoured too clean, please state whether the application of fat liquor to such a skin is the same in its operation, products, and
462 results as when applied to bark-tanned skins; and if not, explain the difference.

(Objected to by defendants' counsel.)

A. It is not. The application of fat liquor to imperfectly oil-tanned or overscoured oil-tanned skins completes the process of tanning which might be effected by further treatment with oil, while its application to bark-tanned skins is not to further tan them, but to give them new properties. The general effect is the same, that is, giving to both classes of skins pliability and softness.

Q. Then, if I understand you correctly, the tanning in oil, when perfect in itself, produces a leather possessing pliability and softness, while the tanning in bark does not, and the use of fat liquor in the one case is to tan the skin, and in the other to impart new properties to it after the tanning process is completed?

(Objected to by defendants' counsel.)

A. Such is my opinion with special reference to sheep-skins. There may be, for aught I know, other varieties of skins which, if bark-tanned, might be suitable for gloves. I assume in this answer that the question refers to different methods of treating the skins for the purpose of obtaining products suitable for glove-making.

Q. Please state whether the physical condition of fat liquor is changed or modified by heat; and, if so, how?

(Objected to by defendants' counsel.)

A. In my opinion, the physical condition of fat liquor is modified by heat; an increase above the ordinary temperature tends to liquify the soluble soaps and to make a more perfect emulsion of the free fatty matters present.

Q. Please state the operation and effect of heated fat liquor upon the bark-tanned skin when applied to or saturated with the fat liquor.

(Objected to by defendants' counsel.)

A. When the bark-tanned skin is placed in the heated fat liquor, the effect upon the leather is as follows: The pores and interstices existing in the tissue are enlarged or modified, as well as the tissue itself, so as to make the whole tissue more permeable to the liquid, whereby portions of the liquor penetrate through the whole thickness of the skin, and the after cooling (after removal from the liquor) causes more or less contraction of the different parts of the tissues, whereby the liquor is forced into all parts of the skin, and the excess is driven to the surface.

Q. Please state the difference, if any, between the application

463 of fat liquor to bark-tanned skins in a cold and warm state in reference to the operation, effect, and substance obtained as a product.

(Objected to by defendants' counsel.)

A. From my experiments, I have come to the conclusion that by the use of cold fat liquor applied to bark-tanned skins, it is practically difficult, if not impossible, to obtain a uniform and good article. The cold fat liquor does not seem to equally penetrate the substance of the skins; some parts of the tissue absorb, or take up, more readily than others the active constituents of the fat liquor, while with hot fat liquor it is very easy to obtain a uniform and good article.

Q. Please state whether, in the use of fat liquor cold, there is or is not a tendency to leave the surface of the skin in a sticky condition, or in a condition in which it may become so by exposure to the air.

(Objected to by defendants' counsel.)

A. In a number of my experiments with cold fat liquor applied to bark-tanned skins, the surface of the skins thus treated became in parts more or less sticky upon exposure to the air.

Q. How do you explain that result?

(Objected to by defendants' counsel.)

A. from my observation and experiments, I am led to believe that the free oil in the cold fat liquor was not in a fine emulsion, and that it did not form so perfect physical combination with the skin, and that it was not so perfectly protected by the soluble soaps contained in the fat liquor, and hence that the oily matters underwent, to a greater or less degree, oxidation, whereby sticky substances were produced. The production of sticky substances by the exposure of thin layers of impure oil to the atmosphere is a common occurrence.

Q. Suppose the fat liquor to be heated to a boiling-point, and then allowed to cool and stand until a separation takes place between the fatty constituents and the alkali; please state whether the emulsion may not be restored, and made as perfect as before by heating and agitation.

(Objected to by defendants' counsel.)

A. I would premise my answer to the above question by stating that when cold fat liquor is allowed to remain at rest, a portion of the oily matters separate, and can largely be made to form an emulsion as before by agitation, even without any increase beyond the ordinary temperature of the air, say 60 or 70 degrees Fa'renheit. From my experiments made by heating fat liquor to the boiling-point, and then cooling, a considerable portion of oily matters were separated. By warming the liquid and agitating it, an emulsion was obtained, apparently similar to that which previously existed in the fat liquor.

464 Q. Please state whether heating fat liquor by adding to or mixing with it hot water is or is not substantially the same in its effects and results as heating it in any other manner.

(Objected to by defendants' counsel.)

A. In my opinion, the effect would be substantially the same by heating fat liquor with hot water, or by fire applied directly to the vessel containing it; whether practically the addition of hot water to the fat liquor would not by diluting the fat liquor render it of less value for treating skins would depend upon the particular specimen of fat liquor so treated, for the composition of different specimens of fat liquor differ considerably in the proportions of the active constituents present.

Q. Then the difference, if any, would consist in the strength and quality of the fat liquor when so heated?

(Objected to by defendants' counsel.)

A. In my opinion, it would.

On his cross-examination by defendants' counsel, the witness further testified as follows:

Q. Did you know anything about this process before your attention was called to it in suits upon this patent now in controversy?

A. I did.

Q. When was your first acquaintance with the subject of dressing leather with fat liquor?

A. I cannot state definitely.

Q. Had you ever seen any fat liquor before your attention was called to it in the suits connected with Russell's patent?

A. I never had.

Q. When did you first see fat liquor? State as near as you can.

A. In the year 1870, if I recollect right. What month I can't say.

Q. Were the tests and experiments named by you on your direct examination as having been made at the request of Mr. Russell and Mr. Place made at their joint request at the same time or at their several requests at different times?

A. Were made at their several requests at different times.

Q. When were such experiments and tests made by you at the request of Mr. Russell?

A. At different times in the year 1870 up to within two or three months last past.

Q. At how many different times? State particularly.

A. I could not state positively how many times.

Q. How many distinct tests and experiments have you made at Mr. Russell's request, that you now remember?

A. I could not distinctly now remember the number. In fact, I never did know. Undoubtedly at least two hundred.

Q. How many different skins did you ever treat for Mr. Russell in the experiments and tests mentioned by you in your evidence?

A. I never treated a single whole skin at any one time, but the whole or greater part of nine skins divided into a number of parts, and
465 portions of other skins, the number of which I cannot state.

Q. Were these skins and portions of skins mentioned by you in your last answer taken to you all at one time or at different times; and if at different times, how many?

A. I received skins, two or three at one time, from Mr. Russell, and I caused to be purchased others, and procured scraps and portions of skins at still other times.

Q. What were the kinds and conditions of the skins and portions of skins mentioned in your last answer when you received them?

A. They were bark-tanned sheep or lamb skins, apparently in good condition. The portions of skins were bark-tanned sheep-skins, and I presume were split, or at least shaved smooth.

Q. Were they or not in the bark-tanned state, or had they been treated by some process to soften them before you received them?

A. In my opinion, these bark-tanned skins had not been subjected to any process, as they were more or less squeaky.

Q. Did you treat, in the tests and experiments referred to by you, any oil-tanned skins; and if so, where did you procure them, what was their kind and condition, and how many?

A. I had but a single oil-tanned skin, apparently in good condition,

pretty soft. I procured it from Mr. Russell. It was an oil-tanned sheepskin.

Q. To what treatment did you subject this oil-tanned skin, if any?

A. Portions of it were treated with a solution of carbonate of soda, and afterwards with fat liquor.

Q. Please state whether or not this oil-tanned skin mentioned by you was thoroughly tanned when you received it.

A. Apparently it was thoroughly tanned.

Q. What was the object of using carbonate of soda upon it, and what was the effect produced by it?

A. The object was to ascertain the effect of overscouring. The effect was to make the skin when dry harsh and stiff.

Q. State whether or not this effect was produced by the carbonate of soda combining with a portion of the fatty matter of the skin, and thereby remove it from the skin in scouring; if not, how was it produced?

A. In my opinion, it was the carbonate of soda, in removing the oily matter from the skin, that produced the effect.

Q. In your judgment, was said skin, after the removal of the oily matter by the carbonate of soda, as you have stated, any less tanned than it was before removing the oily matter?

A. In my opinion, the skin was less perfectly tanned than it was before removing the oily matter.

Q. Whether or not, in your judgment, treating the same skin again in fat liquor does anything more, substantially, than to restore to the skin an equivalent amount of fat liquor to that taken out by the carbonate of soda?

466 A. In my opinion, besides the oily matter restored, the skin retains other substances from the fat liquor.

Q. What other substances?

A. Portions of the soluble soaps.

Q. What is that soluble soap composed of?

A. The soluble soaps removed are composed of oily matters, in combination with soda and potash, principally the former.

Q. In your last answer do you refer to the soluble soaps that are put into the skin when being treated with fat liquor after scouring, mentioned by you, or to those produced by the use of the carbonate of soda and taken out of the skin by scouring?

A. I referred to the soapy substance obtained from the fat liquor.

Q. Do you mean the fat liquor used by you as stated in your answer, after the scouring?

A. I do.

Q. Was not the substance taken out of the skin and formed by the application of the carbonate of soda, combining therewith fat liquor?

A. In my opinion, it was fat liquor, but a substance quite different in appearance and properties from that commonly known as fat liquor.

Q. To what extent have you seen and known fat liquor?

A. To but a limited extent, and by comparatively but few specimens. On two occasions in visiting factories at Gloversville and specimens sent me from that place.

Q. How much fat liquor did you use in the several tests and experiments you have mentioned in your evidence?

I have used but a small number of gallons, probably 8 or 9 gallons.

Q. Do you or not know that fat liquor differs greatly in degrees of strength, according to the successive scourings given to the oil-dressed skin, after the application of soda-ash or other alkali to the skin?

A. I do not know it from any actual experience in the business, but have supposed such to be the case.

Q. Have you ever seen an oil-dressed skin in the raw before tanning?

A. I have seen raw skins, but whether afterward oil-tanned I don't know.

Q. Do you know the condition of an oil-tanned skin, as to softness or otherwise, after the tanning process is completed, and before any other process for softening is applied to it?

(Objected to by plaintiff's counsel.)

A. In a general way, I do, but have had practically no experience in the business.

Q. What is that condition, according to such general knowledge that you say you have?

A. When dry, rather harsh and stiff.

Q. Then the oil-tanning does not produce soft and pliable leather when dry, does it, without some subsequent treatment to soften it?

A. I think that it does.

Q. Will you explain what you mean in your last but one preceding answer, wherein you state, in substance, that such leather when dry is harsh and stiff?

A. I mean that it is harsh and stiff compared with a finished skin.

Q. What do you mean by the finishing of the skin, which
467 changes it from this harsh and stiff condition to the softened condition just named by you?

A. I mean subjecting it to those processes by means of which the tissue of the skin is more or less loosened.

Q. What are the processes referred to by you in your last answer?

A. The processes referred to by me consist essentially, if I remember right, in subjecting them to mechanical forces, by means of which the effect is produced as stated.

Q. Did you ever see those mechanical forces applied so as to state how it is done?

A. I believe that the skin is stretched in various directions by holding it firmly above, and then rubbing down on its surface with an iron instrument, the skin being supported on a block, or resting against a block.

(Question repeated.)

A. It is my impression that I have, but I am not positive.

Q. Is that all the process you know of to which an oil-tanned skin is subjected to render it suitable for the glove and mitten trade?

A. It is.

Q. In your judgment does the application of oil in the tanning of an oil-tanned skin produce only a mechanical or a chemical effect upon the tissues of the skin?

A. I regard it as a mechanical effect; I know of no chemical compound formed between the substance of the skin and oils.

Q. Are the tissues of such skin after such tanning process of the same or different character and condition than they were previous to such tanning?

A. In my opinion they are of a different character and in a different condition.

Q. State specifically, if you know, how the oil combines with the tissue of the skin to produce this difference.

A. I cannot state specifically how the oil combines with the skin.

Q. In your judgment, if the oil be taken out of the tissues of the skin

after it has once been tanned, is the skin then left in an untanned state, as before the tanning?

A. In my opinion, it would depend upon circumstances; the withdrawal of the oil, supposing that to be the only substance introduced by the tanning, might or might not leave the particles or fibres, we may say, in the same relative condition and position as they were prior to the introduction of the oil.

Q. Did you ever treat any skins for Mr. Place?

A. No, sir; I think not.

Q. He never applied to you but once, did he, and that was to give you some fat liquor to make trials upon?

A. He did apply to me more than once, and engaged me once to do certain specified things. He did furnish me with fat liquor on one occasion.

Q. Do you or not know that when the fat liquor is again applied to oil-tanned skins which have been scoured too clean, that the skins have to be again scoured to remove the surplus fat liquor which may be in them?

A. I do not certainly know that such is or is not the case.

468 Q. Do you or do you not know that where oil-tanned skins are tanned in the most perfect manner of tanning, that the oil has to be scoured out of the skins by the use of an alkali before the skin is suitable to use for mittens and gloves?

A. If it is meant by the question to inquire whether I know that all of the oil which was worked into the skin is afterwards removed by the process of scouring, I would answer that I do not know such to be the fact.

Q. Do you or do you not know that after such tanning as named in the last question, the surplus oil, or any portion of the oil, is required to be scoured out of the skin before it is suitable for the manufacture of mittens and gloves in the trade?

A. I understand that scouring is a part of the process used in oil-tanning.

Q. You have no personal experience in this matter of oil-tanning or scouring, have you, except those experiments which you have named?

A. I have had no experience in oil-tanning and but little in scouring. I have other than those experiments.

Q. In your judgment, when fat liquor is applied to bark-tanned skins is the combination formed chemical or mechanical?

A. In my opinion, it is mechanical.

Q. Is not the effect produced by the application of fat liquor to bark-tanned skins substantially the same as that produced by its application to oil-tanned skins, as to making them respectively soft and pliable?

I should say not.

Q. Did you not testify upon your direct examination, in substance, that the general effect upon such skins is the same—that is, giving to both classes of skins pliability and softness?

A. I did so testify substantially, but as my answer necessarily assumed that the skins of both classes so treated were deficient in the qualities of softness and pliability added to them by means of the fat liquor, for otherwise pliability and softness would not be added to them if they already possessed it.

Q. Then, if I understand you rightly, in case of a want of pliability and softness either in an oil-tanned skin or in a bark-tanned skin, the application of fat liquor to each would produce substantially the same effect upon both in producing pliability and softness. Am I right?

A. In my opinion, softness and pliability would be gained by treating the two classes of skins mentioned with fat liquor.

Q. If both classes of skins so treated were deficient in softness and pliability by means either of the fat liquor or oil having been taken out of the oil-tanned skin, or not having been put into the bark-tanned skin, would the application of fat liquor to both of said classes produce substantially the same effect as to producing softness in each?

A. In my opinion, softness and pliability would be gained by the
469 treatment of the different classes of skins mentioned with fat liquor.

Q. Please state whether or not the differences stated by you in your direct examination in the effect produced by the application of fat liquor to oil-tanned skins and to bark-tanned skins do not depend upon the kind of skin subjected to the process and its former treatment, rather than upon the process itself.

A. I do not know to what particular paragraph in my direct examination the question refers.

Q. Among other things, in your answer to the question on your direct examination as follows: "Please state the difference, if any, between the bark and the oil tanning in reference to action, combination, and results," you state: "The products in the two cases differ in composition and physical properties." Referring to that question and answer, will you please answer the last question?

A. I cannot determine whether the one or the other condition would be paramount; generally it would depend upon the nature of the particular case referred to.

Q. Referring to that portion of your answer on your direct examination referred to in the last question in which you say the "products in the two cases differ in composition and physical properties," does that difference depend upon the substance or material subjected to the process, or upon the process to which the substance or material is subjected?

A. I could not say. I think it would depend upon both. The process itself includes the use of certain agents in either case.

Q. Did you testify as a witness on a trial at Utica, March, 1871, in a suit between this plaintiff and Albert Klein for an alleged infringement of this patent in controversy?

A. I did.

Q. Please state whether or not the following questions were put to you on that trial and answers by you thereto made, viz: "Q. But you say the effect of the treatment with the fat liquor is the same?—A. I think so. Q. Are they alike or unlike in their properties?—A. They are different, certainly; they scarcely resemble each other. Q. Will you state whether the result of this immersion upon the bark-tanned skins and the result of the action upon the oil-dressed skins is the same or different?—A. The product is undoubtedly different. Q. That is because the substance subjected to the process is different in the outset, is it not?—A. Yes, sir."

(Objected to by plaintiff's counsel.)

A. I am unable to say whether such questions and answers were made on that occasion. I may add, furthermore, that I am inclined to doubt whether any such positive or direct statements were made by me so absolutely at that time.

470 Q. Will you now swear positively that such questions were not put to you and such answers made on said trial at Utica, as stated in the last interrogatory?

A. As in my answer of the previous question, I am unable to swear

positively that such questions and answers were made on the occasion referred to, in the precise form as given above.

Q. What, in your judgment, would be the effect of applying fat liquor to leather when the temperature of the liquor was at or near the boiling-point?

(Objected to by plaintiff's counsel.)

A. The leather would be greatly injured or destroyed.

Q. At what temperature was the fat liquor which you applied to skins in your experiments, as stated by you, when applied cold?

A. The temperature was not directly measured, but the fat liquor, being kept in an apartment that was at a temperature at which it usually is in houses at different seasons of the year, must have varied from about 60 degrees to 80 degrees. I cannot state positively whether any experiments were made during the extreme hot weather.

Q. How many skins did you ever treat with cold fat liquor?

A. I never treated a single whole skin, but only portions of skins. I presume probably twenty portions; yes, I would say more than that, I'll say thirty portions of skins.

Q. Who furnished you your fat liquor for such treatment?

A. The fat liquor was obtained by myself at Gloversville, and was received from Mr. Russell and Mr. Place.

Q. At the same time or at different times?

A. At different times?

Q. Do you mean to state that you ever had any skins from Mr. Place to treat?

A. I don't remember that I have.

Q. Do you mean to state that you ever had any fat liquor of Place at Gloversville?

A. At Gloversville; no sir.

Q. Did you treat skins furnished to you by Mr. Russell with fat liquor furnished you by Mr. Place?

A. I have no recollection of doing so.

Q. At what temperature did you treat the skins mentioned by you in said experiments when you treated with hot or warm liquor?

A. Usually at temperatures varying between 120 and 140, though at other times experiments were made at higher temperatures, and even to the boiling temperature.

Q. What was the specific experiment or test you were to make with the fat liquor received from Mr. Place, if any?

A. As I remember, the experiments were to ascertain the effect of heat and subsequent cooling upon fat liquor, so far as regards the temporary and permanent separation of the fatty matter. I can't positively and absolutely state that the experiments made were so made with fat liquor furnished by Mr. Place, but I believe such to be a fact.

Q. Can you swear positively that in case the fat liquor has been
471 heated to or near the boiling-point and then cooled, and the fatty matter raised upon the top of the liquor, that the emulsion can be again made as perfect as it was in the fresh fat liquor before heating?

A. I would premise my statement with the remark that I have never experimented with fresh fat liquor, but that an emulsion may be obtained in the fat liquor as used by me by heat and agitation after the fat liquor has been heated to at or about the boiling-point, as was the emulsion in the fat liquor before the latter was heated.

Q. Is fat liquor composed of oil or other fatty matter combined with an alkali?

A. It is not.

Q. What is it?

A. The principal constituents are soaps of the alkalies soluble in water, lime-soaps, oily matters in a state of emulsion or minute division, carbonate of soda, certain animal matters, some of which contain nitrogen, whose name and composition I do not know, and small quantities of various inorganic salts.

Q. Does not fat liquor vary in its constituent elements as well as in strength, if it is derived from different mills, and different lots of skins, and from different scourings of the same skins?

A. The fat liquor produced under the various conditions mentioned undoubtedly would vary as to certain of its constituents, but I am not prepared to say that the fat liquor produced in the various conditions mentioned would be deficient in any of those constituents which may perhaps be properly called the active constituents of fat liquor.

Q. What, in your judgment, is the principal efficient element or constituent of fat liquor which produces the softening effect upon the skin or leather?

(Objected to by plaintiff's counsel.)

A. I cannot say positively that there is one constituent alone which principally or wholly has the influence of softening the skin or leather.

Q. I did not ask you to state positively, but your judgment.

(Objected to by plaintiff's counsel.)

A. In my judgment, the oily matters undoubtedly have a great influence in softening certain oil-tanned skins, but whether in the case of bark-tanned skins the influence of the oil without the soap would have any such influence I cannot give a decided opinion.

Q. In case of the liquor having been heated to at or to the boiling-point and having cooled again, and the fatty matter having arisen to to the top, of what is such fatty matter composed, and of what is the liquor underneath it composed, if you know?

(Objected to by plaintiff's counsel.)

A. The fatty matters which rise to the surface consist principally of certain fats called oleine and palmine and small quantities of other fats of the same class. Besides this, there are certain coloring matters
472 and organic compounds whose name and composition are, as far as I am aware, unknown. The composition of the liquid lying beneath the layer of oily matter consists of water, soaps of the alkali, an oily emulsion, carbonate of soda, small quantities of mineral and organic matter, and of lime soap.

Adjourned to April 2d.

Q. Is the emulsion produced by a combination of oil and water by an alkali a chemical compound or mechanical mixture?

A. The emulsion, is a mechanical mixture.

Q. In producing the emulsion does the alkali cause the oily matter to combine with the water in definite proportions or not?

A. The oil does not combine with the water, but mixes with it in variable proportions.

Q. What causes the oil to mix with the water, and what holds such mixture in combination?

A. Undoubtedly the carbonate of soda has an influence. The emulsion is produced by the physical properties of the different liquids.

Q. Is it not the alkali causing the oil and water to combine with it which produces the emulsion?

A. As I stated in my answer to the previous question, the carbonat

of soda has an influence in producing the emulsion. An emulsion may be produced simply with fatty matters and water.

Q. What do you mean by the term "emulsion" as you use it in your evidence?

A. I would define the term "emulsion" as used in my evidence in two different ways, which are substantially the same, and which are as follows: First, the suspension of fatty or oily matters in a state of minute mechanical division in a liquid which contains the constituents of fat liquor minus the free fatty matters; and second, as the liquid produced by the suspension of free oily matters in a state of minute mechanical division in a solution of carbonate of soda.

Q. Your experiments and tests mentioned in your evidence, and your experience in the use of fat liquor upon skins, have been limited to small quantities in your laboratory, have they not?

(Objected to by plaintiff's counsel.)

A. They have.

Q. In your evidence, in comparing the difierent effects of warm or cold liquor upon the skin, you say, "Some parts of the tissue absorb and take up more readily than others the active constituents of fat liquor." What are those active constituents mentioned by you?

A. The substance which I have alluded to as the active constituents of fat liquor are the fatty matters and the soluble soap.

Q. When you speak in your evidence of the oily matters in cold fat liquor undergoing a greater or less degree of oxidation, do you or not mean (in the common phrase) the liquor sours?

A. I do not remember to have used that expression in regard
473 to cold fat liquor. I used the term oxidation as applied to the oily matters, not in the fat liquor, but to that contained in the bark-tanned skin after its treatment with cold fat liquor.

Q. Does the oxidation of the oily matter referred to make it sour, in common acceptation?

A. I am unable to state whether the term "oxidation" as used by me as above stated is the same condition expressed by the term "sour," as commonly used.

Q. How long had you kept the fat liquor with which you experimented upon the skins in a cold state?

A. The fat liquor had been kept for some weeks, and in other cases for a number of months, and it is my impression that some of that with which I experimented had been retained by me more than a year, but learning the fact by information and observation that fat liquor was liable to, and would, rapidly change or decompose, I took the percaution of preserving it in fruit-jars, the fat liquor contained in which had been heated to remove the air, and then the containing vessels tightly sealed. By this means it was apparently preserved in a state substantially as when first received.

Q. How long had you kept it before thus sealing it up?

A. I cannot state positively the exact time, but it is my belief that it was the same day or the day after.

Q. In what season of the year was it when sealed up, and about what temperature was it?

A. It was sealed up at different seasons; one lot in the summer, another in the spring, and it was kept at a temperature varying from 40 to 50 degrees, up to the ordinary temperature of the air during the summer.

On the redirect examination by plaintiff's counsel, the witness further testified as follows:

Q. From your knowledge of fat liquor, and your experiments, and your knowledge of chemistry, please state whether, in your judgment, the oxidation of the oily matters spoken of by you on the surface of the skin after treatment with cold fat liquor was due at all to the age of the liquor used for the purpose, or from any defect or decomposition in the same.

A. In my judgment, the oxidation referred to was not owing to the age of the fat liquor, nor to any defect or decomposition of the same.

Q. Referring to an answer on your cross-examination in which you state, in substance, that you had not experimented with fresh fat liquor, please explain what you mean to be understood by the term "fresh fat liquor," as so used by you.

A. In making the statement that I had not experimented with fresh fat liquor, I wish it to be understood that I did not experiment
474 with fat liquor that was just previously, or within a very short time, produced; that which I did experiment with was not, however, decomposed or sour, so far as I could judge.

Q. In the experiments, or some of them, to which you have referred, did you use fat liquor sent you from Gloversville by Mr. Russell, the plaintiff, and also by Isaac V. Place?

(Objected to by defendants' counsel.)

A. I used the fat liquor obtained from the two sources mentioned for experimenting, but what particular experiments with leather were made with each of the specimens I cannot now indicate.

Q. In case the fat liquor be heated to or near the b*uild*ing-point, and then allowed to cool sufficiently to permit the operator to bear his hands in it, would there occur any appreciable separation between the fatty matters and the alkali, or any separation that would materially change the character of the liquor or affect its action upon the skin?

A. In my judgment, under the conditions named the separation of the fatty matter would depend upon the nature and form of the vessel and the rapidity with which it was cooled. In my judgment, there would be an appreciable separation of fatty matter, but in an open vessel of the form of an ordinary kettle, I do not believe that the quantity of fatty matter separated would exert any material influence upon the quality of the fat liquor or its effect upon the skin.

Q. Please state whether any of the experiments made by you with fat liquor obtained from Gloversville were made prior to enclosing it is jars as you have stated; and, if so, how soon after its reception by you?

(Objected to by defendants' counsel.)

A. A number of experiments were made with the fat liquor as obtained from Gloversville, and within a few hours after its arrival at my office, and before enclosing it in jars, as before stated.

CHAS. H. PORTER.

Subscribed and sworn this 2d day of April, 1873, before me.

J. WENDELL,
Special Examiner.

Plaintiff now put in evidence his exhibits heretofore identified and marked by the examiner from No. 1 to No. 9, inclusive, to be used as exhibits on the trial and argument of this cause, in connection with the evidence already given in relation thereto.

(Objected to by defendants' counsel.)

Whereupon plaintiff rested.

475 *Defendants' rebutting evidence.*

SAMUEL DODGE, sen., a witness reproduced, resworn, and re-examined by and on behalf of the defendant, testified as follows:

Q. In case of treating bark-tanned sheep and lamb skins with fat liquor which are colored for use, as mentioned in the testimony of Francis Hevey, please state whether such coloring is done before or after treatment with fat liquor.

A. Generally done before.

Q. Why is it done before such treatment?

A. Because it is easier coloring.

Q. Will you explain why it is easier coloring before than after such treatment?

(Objected to by plaintiff's counsel.)

A. We got to make a preparation and put on the skin, in order for it to take the dye, and before that they are subjected to fat liquor; we hain't got to do it.

Q. Is the dyeing before the treatment with fat liquor more expensive or less expensive than it is after treatment with fat liquor?

(Objected to by plaintiff's counsel.)

A. It is less expensive.

Q. In case of dyeing before treatment with fat liquor afterwards, do you or do you not again after such treatment dye the skin?

A. No, sir; we do not.

Q. What is the color of the material called gum sometimes used in the dressing of skins?

(Objected to by plaintiff's counsel.)

A. White.

Q. Please state whether the subjecting of these colored skins to the fat liquor after the coloring is for the purpose of making the skin softer or for turning the color darker, or both.

(Objected to by plaintiff's counsel.)

A. Both.

Q. Please state whether in the use of gum upon the skin to give the skin a gloss and a darker color, that darker color is produced by the color of the gum, or how produced.

(Objected to by plaintiff's counsel.)

A. It's the cause of oil and alkali together merely to darken down one shade darker and to give it a gloss. It's produced by putting on the gum to it that one shade darker.

Q. Does the color of the gum produce this darker shade?

(Objected to by plaintiff's counsel.)

A. It do not.

Q. Referring to a lot of skins dressed by you in about 1856 for Daniel S. Hullett, who has testified in this case, please state how that
476 lot was treated and how finished.

A. They was finished and buffed for boys' mittens; that's what he brought them to me for. They was dampened down with a sponge, the thick places, with fat liquor; that is, dampened over lightly—the stout places. I daresn't let the liquor go through; if it did, I couldn't buff them—not to look clear.

Q. What are the materials used for coloring such skins as have been referred to as colored?

A. Logwood and copperas.

Q. State whether or not the effect of such coloring-matter is to soften the skin or otherwise.

(Objected to by plaintiff's counsel.)

A. Make them harder.

Q. How soon after the fat liquor is produced at the mills is it necessary to use it in the treatment of bark-tanned sheep and lamb skins in order to produce the proper effect upon the skins to make them soft and pliable for mittens and gloves?

(Objected to by plaintiff's counsel.)

A. I like to use it as soon as I do get it. It all depends what weather it is; it might be three days; it might be four; it might be not one; it might be six weeks.

Q. In warm weather how soon will the fat liquor sour so that it will be unsuitable to use?

A. I've had it sour in two days in thunder weather.

Q. What causes the spotting of skins when treated in fat liquor, when such effect is produced?

A. I've had them spot so when the liquor have got sour, and I've spotted them when the alkali is too strong in the liquor. I call it striping them. When the liquor do get sour, oil separate from alkali; put skins in it then, it will spot them.

Q. What causes the spots when you put skins into liquor in which the oil is separated from the alkali?

(Objected to by plaintiff's counsel.)

A. The oil.

Q. Please state what kind of spots are made upon the skin where the oil is separated from the other materials of the fat liquor.

(Objected to by plaintiff's counsel.)

A. Dark spots.

Q. What kind of spots as to being oily or otherwise?

(Objected to by plaintiff's counsel.)

A. Well, it's spotted—the skin is spotted; that's all I can say—cloudy, where the oil has struck in to them.

Q. What kind of spots or stripes are produced where there is too much alkali in the liquor?

(Objected to by plaintiff's counsel.)

A. It cuts the color out of the tanned skins—causes them striped.

Q. Does the spotting or striping of the skins depend upon the length of time it remains in the liquor or the alkaline strength of the liquor, when such effect is produced, by there being too much alkali?

(Objected to by plaintiff's counsel.)

477 A. It do not depend upon the time that they were in it. If it is too strong of alkali, soon as the skin is saturated it will cut the color or discharge it.

Q. If the oil is seperated from the other portions of the liquor, does the spotting of the skins depend upon the length of time they are in the liquor?

(Objected to by plaintiff's counsel.)

A. It do not.

Q. If the fat liquor is properly reduced and prepared for the treatment of skins, does the length of time which the skin is permitted to remain in the liquor, as practised by you, injure the skin by making it spotted or striped?

(Objected to by plaintiff's counsel.)

A. It do not.

On his cross-examination by plaintiff's counsel, the witness further testified as follows:

Q. What works or books on chemistry have you ever studied?
A. None.
Q. Can you read or write?
(Objected to by defendants' counsel.)
A. I can read some, but can't write.
Q. What works, if any, have you ever read on dyeing and coloring, or tanning or dressing skins?
A. I never read any books.
Q. Do you ever color the bark-tanned sheep or lamb skins, after subjecting them to fat liquor?
A. I have.
Q. In such case, of what is your coloring material composed?
A. Logwood and copperas.
Q. Is it the same that composes the coloring-material which you apply before subjecting the skins to oil?
A. It is.
Q. In case the coloring-material is applied to the skin after fat-liquor treatment, after such coloring does the skin contain both the coloring-matter and the fat liquor absorbed by it previous to the introduction of the coloring-matter?
A. They do not.
Q. Which is discharged, the coloring-matter or the fat liquor?
A. The oily substance that is on the surface of the skin.
Q. Do you mean to be understood as testifying that the introduction of the coloring-matter into the skin abstracts from the skin all the fat liquor it previously contained and brings it to the surface?
Q. The biggest portion does; I don't say all does.
Q. In case the coloring-matter is introduced into the skin before the application of the fat liquor, does the fat liquor subsequently applied penetrate and remain in the skin?
A. It does.
Q. Then in that case the skin contains both the fat liquor and the coloring-matter, does it not?
A. It does.
Q. Now do you mean to swear that if the fat liquor be introduced first and the coloring-matter afterwards, that in such case the coloring-matter and the fat liquor do not both remain in the skins?
478 A. I do mean to swear that all don't; there might a portion of it be left in the skin.
Q. Are you able to state what, if any, chemical or mechanical combinations take place between the constituents of the coloring-matter, or any of them, and the constituents of the fat liquor, or any of them, when they are both present at the same time in the skin?
A. I destroy one, in order for it to take the dye, or destroy the biggest part of it. I can't say all.
Q. Can you tell whether there is or is not any chemical or mechanical combination between any of the constituents of the coloring-matter and any constituents of the fat liquor when they are both present in skins?
A. There is mechanical.
Q. Between what elements or constituents is this mechanical combination formed? Mention them by name.
A. With dye-stuff, copperas, oil, sal-soda or soda-ash.
Q Then these things just named form, you think, do you, a mechanical combination when they are all present the same time in the skin.
A. I do.

Q. Does it make any difference, as to the combination produced by these things, which is first introduced?

A. It does.

Q. State what?

A. Logwood and water first, copperas and water afterwards, oil and alkali.

Q. Then when these three or four things are introduced, and are altogether, form a combination, do they, which you call a mechanical combination?

A. I do, when it is put in the skin.

Q. Can you state what the character or the properties of the compound thus formed are?

A. For to make it black, soft, and pliable, fit for kid purposes.

Q. I didn't ask you what the effect produced by this compound was, but to state, if you know, what the character and qualities of the compound formed by the union of these different things are. Answer if you are able; if not, say so?

A. It will make black.

Q. Suppose these things you have mentioned as forming a mechanical combination were introduced in this order, to wit: first, fat liquor or oil; secondly, the copperas, and third logwood and water, would they, when all present together, form the mechanical combination that you have described?

A. It would, if it was used separate; but if you come to put it together it would destroy one another.

Q. You do sometimes apply the coloring-matter after the skins have been treated in fat liquor, do you not?

A. Not without destroying the fat liquor; I have used it.

Q. Then you mean to swear, do you, that the contact of the coloring-matter with the fat liquor destroys the fat liquor?

A. No, sir.

Q. Do you mean to swear that the fat liquor destroys the coloring-matter?

A. I mean to swear that when a skin is fat liquored that *he* won't take the coloring-matter, it causes three times more labor, where
479 it would preparation put on for destroying the surface of the fat liquor on the grain of the skin so as it will open the pores and receive the dye.

Q. I repeat the question. Do you mean to swear or be understood as testifying that when the fat liquor comes in contact with the coloring-matter that the coloring-matter is destroyed by the fat liquor? Please answer the question that I ask you and nothing else.

A. No, sir.

Q. What did you mean when you swore in substance, a few minutes since, that these things forming a mechanical combination as mentioned by you destroyed each other when they came in contact?

A. They will destroy one another when copperas is used.

Q. You always use copperas, don't you, when you color these skins black?

A. I do.

Q. Are you able to swear whether there is or is not any chemical combination between the constituents of the coloring-matter, or any of them, and the constituents of the fat liquor, or any of them, when they are brought in contact, as you have described?

A. I never learned any of it.

Q. Then you are not able to tell whether there is or is not, are you?

A. Chemistry I don't know anything about.
(Last question repeated.)
A. There might be, but I can't swear that it is.
Q. Can you swear that there is not?
A. No, sir.
Q. When the fat liquor is decomposed or has become sour, is that condition of it readily known by examination?
A. I can tell it myself.
Q. How long may fat liquor keep without souring in warm weather, under favorable circumstances?
A. Might keep three or four days, that is, after we get it. I do not know how long it stood before we get it.
Q. When skins are spotted or striped, as you term it, in places by the alkali, do you mean to say those spots or stripes would not be enlarged or multiplied by a longer exposure of the skin to the alkali?
A. I don't think it does.
Q. Will you swear that they would not?
A. No, I wouldn't.
Q. When the skin is spotted by the oil, as you have described, would a longer exposure of the skin to the liquor enlarge or multiply those spots?
A. I should say not.
Q. Will you swear that it would not?
A. No, I couldn't.
Q. About how long does it take to produce the spots or stripes of either character?
A. When they are saturated, about two minutes.
Q. Have you in any instance, when you have found any skins spotted or striped, as you have described, returned the skins to the fat liquor and allowed them to remain for the purpose of testing the further effect of the liquor as respects the spotting or striping?
A. Not without reducing of it.
Q. In case the spotting is of the oily character spoken of by you, are they produced in two minutes?
A. Yes, sir.
480 Q. And what the effect would be in such case if the skin were returned to the same liquor and allowed to remain for a considerable time you do not know by actual experiment, do you?
A. No, sir.

On his redirect examination by defendants' counsel the witness further testified as follows:

Q. In your cross-examination you speak of a portion of the oil being taken out of the skin before coloring. When the coloring is done after treatment with fat liquor, state how you take it out.
(Objected to by plaintiff's counsel.)
A. With chamber-lye and sal-soda, scoured on the table with a brush on the grain side.
Q. When skins are brought to you for coloring and treatment in fat liquor, state whether or not you ever treat with fat liquor before the coloring?
(Objected to by plaintiff's counsel.)
A. No, sir.
Q. In what cases do you do the coloring after treatment with fat liquor?
(Objected to by plaintiff's counsel.)

A. If the skin has been treated with fat liquor is a great many of them selected out for to be colored for wrist-leather.

Q. Are such as are colored by you after treatment with fat liquor brought to you for coloring before or after such treatment with fat liquor?

(Objected to by plaintiff's counsel.)

A. Such as are brought to me for coloring I color them before treating them with fat liquor.

(Question repeated. Objection repeated.)

A. They are brought to me after such treatment.

Q. Please explain more fully what you mean when you say in substance "if you first take fat liquor or oil; secondly, copperas; thirdly, logwood and water, in the process of coloring, they would, if put together, destroy one another."

(Objected to by plaintiff's counsel.)

A. Copperas would destroy the whole of it.

Q. Do you mean for the purpose of coloring?

(Objected to by plaintiff's counsel.)

A. Coloring, or any other purpose.

Q. Do you mean coloring or any other purpose in the practical dressing of skins?

A. I do.

On his re-cross-examination by plaintiff's counsel the witness further testified as follows:

Q. Will you swear that on your cross-examination you said one word about a portion of the oil being taken out of the skin before coloring?

A. I did.

Q. What did you say? State definitely.

(Objected to by plaintiff's counsel.)

481 A. I say that the oily substance on the grain side had to be destroyed, before it could take the dye, with some preparation.

Q. Will you now swear that you never applied coloring-matter to a bark-tanned sheep or lamb skin which you had previously treated with fat liquor?

A. No, sir.

Q. Have you not, in the course of your experience in dressing skins, sometimes applied the coloring-matter, after the application of fat liquor by yourself or your employees?

A. I have done it by using a preparation first.

(Plaintiff's counsel did insist upon a categorical and direct answer to the question put, without any further additions or explanation, and that said witness, under said counsel's remonstrance, added the latter part of his answer, to which said counsel objects, and defendants' counsel insists it be taken as a part of said answer.)

Q. By the term "preparation," given in your last answer, do you mean chamber-lye and sal soda, referred to on your redirect examination?

A. I do.

Q. Then it is not true, is it, that all the skins ever brought to you for treatment with fat liquor and coloring were colored before the application of the fat liquor, and not afterwards? Please answer the question directly whether it is or is not true, without any further answer or statement.

(Objected to by defendants' counsel.)

A. Some had been brought there after treatment with the fat liquor and some before for coloring. There had been some colored and some not colored before treating.

(Plaintiff's counsel objects to the answer thus given as evasive, and neither responsive nor an answer to the question, and repeats the question.

Question repeated.)

A. No, sir. They were not all treated before, but were all treated after, except those for wrist-leather.

(The witness now says he does not understand the last question, and asks that it be read to him again. On being reread, the witness made the following answer:)

A. No, sir.

his
SAMUEL + DODGE, SEN.
mark.

Subscribed and sworn this 3d day of April, 1873, before me.

J. WENDELL,
Special Examiner.

ISAAC V. PLACE, a witness recalled, resworn, and re-examined by and on behalf of the defendants, further testified as follows:

482 Q. Please state from your experience in dressing skins whether or not in case of the fat liquor having been heated, so as to cause the fatty matter to rise to the top, the emulsion can be again produced by agitation and heat, one or both, without adding additional materials, so as to be suitable for the treatment of bark-tanned sheep and lamb skins.

(Objected to by plaintiff's counsel.)

A. It cannot by either or both.

Q. Why not?

(Objected to by plaintiff's counsel.)

A. Is not a sufficient quantity of alkali there to hold the oil.

Q. What is the practical effect upon a bark-tanned sheep or lamb skin produced by treating it in such liquor where the emulsion is attempted to be reproduced, and is reproduced as well as it can be, by agitation and heat, one or both?

(Objected to by plaintiff's counsel.)

A. The agitation of the liquor stirs the oil all through the liquor, and the oil being stirred out of sight remains in large particles, and the skins immersed in it catches these particles of oil and makes grease-spots all over it.

Q. In practice what is required to be done before treatment of the skin in such liquor, in case the oily matter is raised to the top by heat?

(Objected to by plaintiff's counsel.)

A. We always skim it off before immersing the skins.

Q. Please state what is the cause of spotting the skins treated in fat liquor when such effect is produced by such treatment.

(Objected to by plaintiff's counsel.)

A. One cause I have stated, and the other is, when there is too much alkali in the liquor, it draws the tan from the skin in spots, because the skin is thinner and softer in some parts than others.

Q. State whether or not the skin treated with fat liquor is spotted by means of the length of time it remains in the liquor, provided the strength of the liquor is adapted to such time.

(Objected to by plaintiff's counsel.)

A. It would take effect almost immediately, it would not require any great length of time.

Q. In case fat liquor is reduced in strength to the degree ordinarily used for treating skins, state whether or not the skin treated in it would be spotted if it should remain in from half an hour to twenty-four hours?

(Objected to by plaintiff's counsel.)

A. I think not.

Q. Does the spotting of skins by fat liquor treatment depend upon the length of time they are in the liquor, or the strength of the liquor?

(Objected to by plaintiff's counsel.)

483 A. I think it depends on the strength of the liquor.

Q. How soon after the fat liquor is produced at the mill must it be used in the treatment of bark-tanned sheep and lamb skins in order to produce a proper effect upon them?

(Objected to by plaintiff's counsel.)

A. The sooner we can use it the better. We most always try to use it the same day it is made. It must be used before it gets sour to produce the effect, which will take place in two or three days in summer time.

Q. What is the practical effect upon both bark-tanned sheep and lamb skins and oil-tanned sheep and lamb skins which have been scoured too close, by treating them respectively with fat liquor, as to softness and pliability?

(Objected to by plaintiff's counsel.)

A. It would make them both soft and pliable.

Q. In treating the skin which has been oil-tanned, and scoured too closely again with fat liquor, is or is not such skin any more perfectly tanned after such treatment than it was before?

(Objected to by plaintiff's counsel.)

A. If it is properly tanned before, it isn't.

Q. What is required in such a skin which was properly tanned, but too closely scoured, in order to make it soft and pliable?

(Objected to by plaintiff's counsel.)

A. A certain amount of fat liquor.

Q. And how is that fat liquor put in for that purpose?

(Objected to by plaintiff's counsel.)

A. It is sometimes immersed in a tub of fat liquor. Sometimes we obviate the difficulty by brushing it on.

Q. State whether or not, either in oil-tanned or bark-tanned sheep and lamb skins, the material from which glue is made is removed from the skin by such tanning.

(Objected to by plaintiff's counsel.)

A. In the oil-tans the glue is all removed, and I think in the bark-tanned.

Q. If in your business you used bark-tanned sheep and lamb skins softened by fat liquor in a colored state, please state whether such coloring is done before or after treatment with fat liquor.

(Objected to by plaintiff's counsel.)

A. It is done before.

Q. Please state why.

(Objected to by plaintiff's counsel.)

A. They could be colored before fat-liquored with half or one-third the labor they could afterwards.

Q. Will you explain the reason of that difference in the labor?

(Objected to by plaintiff's counsel.)

A. The bark-tanned skin takes the dye readily; a fat-liquored

434 skin will not take the dye readily, on account of the oily sub-

stance in fat liquor. It requires more time and harder work to brush it in.

On his cross-examination by plaintiff's counsel the witness further testified as follows:

Q. What is an emulsion?

A. I understand emulsion to be a mixture.

Q. Then oats and beans mixed together would constitute an emulsion, would it?

(Objected to by defendants' counsel.)

A. I hardly know how to answer that; I don't know but that would be one kind of emulsion, but that is not such an emulsion as I was talking about.

Q. By heating fat liquor, is the quantity of any of the ingredients or of the whole compound increased or diminished, either the one or the other?

A. No, sir; not further than a part of the water, by boiling, might evaporate.

Q. Suppose the fat liquor to be heated up to the boiling-point, without boiling, in that case would the whole body of the liquor or any of its constituent parts be increased or diminished in quantity?

A. It would not be increased or diminished further than the evaporation of the water; you cannot heat it or warm it without evaporation.

Q. In the case last supposed, would the evaporation, spoken of by you, be considerable or otherwise?

A. Not considerable, not materially.

Q. In such case would the quantity of alkali contained in the fat liquor be increased or diminished, either the one or the other?

A. Not materially.

Q. After the heating of the fat liquor to the point last supposed, the vessel holding it and in which it was heated would contain, would it not, all the constituents of the fat liquor that were there before the heating, except the slight and immaterial evaporation of the water spoken of by you?

A. It would.

Q. Then in such case the vessel would contain the same quantity of alkali after the heating that it did before, would it not?

A. Yes.

Q. In your practice, referred to on your direct examination, where you skim off the oily matter raised to the top by heat, after thus removing the scum, do you immerse the skin in the remaining liquor?

A. We do.

Q. What is the effect produced upon the skin in such cases?

A. It makes it soft and pliable and suitable for gloves.

Q. Referring to your answer, on your direct examination, in which you say in substance there are two causes for the spotting of the skin treated with fat liquor, the one the floating particles of oil, as described by you, and the other too much alkali in the liquor, please state whether these two causes exist and act in the same liquor at the same time.

A. They do not.

Q. In the case of too much alkali, will the spotting effect be
485 increased and aggravated by allowing the skin to remain in the liquor longer than the usual time?

A. It would be aggravated until it absorbs the lye.

Q. Then the deleterious effect of the alkali in such cases depends

does it not, somewhat upon the length of time to which the skin is subjected to the liquor?

A. Yes.

Q. In your judgment does the alkali in the fat liquor, whether in excess or otherwise, act upon the skin when it is immersed?

A. It does.

Q. Suppose the alkali to be present in the liquor in the proper proportion for the treatment of skins, would it produce the spotting effect referred to, or any deleterious effect upon the skin by allowing the immersion of the skin to continue considerably longer than the usual period?

A. The alkali would not.

Q. Would the skin in such case be injured by remaining too long in the liquor?

A. No, sir.

Q. Did you ever immerse a bark-tanned sheep or lamb skin in heated fat liquor and allow it to remain there for 24 hours?

A. I don't think I have; I may have done so.

Q. Then your opinion that such a skin as last referred to and so immersed would not be injured by remaining 24 hours in the liquor, is one of theory merely, and not of demonstration, is it not?

A. As far as 24 hours is concerned, it is theory; I never let them lay in so long.

Q. Will you swear that you ever allowed a batch of such skins to remain twelve hours, on being immersed in warm fat liquor?

A. Not positively.

Q. Is there any difficulty in ascertaining by examination whether fat liquor has or has not become sour?

A. No, sir; not to a man who is familiar with it.

Q. How long will it remain without getting sour at other times than in the summer?

A. It depends upon where it is kept. If it was kept in a warm room where the temperature was at summer-heat, it would sour in a day or two. If kept out doors where it would freeze, it might stay there months and not sour.

Q. Please answer the last question, with reference to the same conditions and circumstances to which you referred in your answer on your direct examination, in which you stated in substance that fat liquor would become sour in two or three days in summer-time.

A. I can only explain by saying that the same conditions and the same temperature would sour fat liquor in the winter as in the summer.

Q. Kept as fat liquor usually is at Gloversville, about how long will it keep during the fall season without becoming sour?

A. I can't say how long it would keep; it would depend on the atmosphere; it would keep longer in cold weather than in warm weather.

Q. Would or would not the length of time it would keep at any season of the year depend among other things upon the temperature
486 and other conditions of the atmosphere?

A. It would.

Q. Can you swear positively that it might not, under favorable circumstances, keep a week or more without souring, when not frozen?

A. No, sir.

Q. Can you swear positively that it might not keep a fortnight?

A. No, sir.

Q. Since the suspension of your cross-examination yesterday at this point, and during the examination of Samuel Dodge, sen., one of the

defendants, did you, during any portion of his examination, sit by counsel for defence and suggest to them questions to be put to the witness, and discuss with them the matters upon which he was being examined?

A. I did sit by counsel for the defence; I did not suggest to them any questions to be put to the witness; I don't understand that I discussed the subject, but had some conversation with them.

Q. Do you mean to be understood as testifying that during Mr. Dodge's examination you did not have conversation with counsel for defence upon the matters in regard to which they were examining him?

A. No, sir.

Q. Then, while they were examining him you did sit by them and hold more or less conversation with them upon the matters of his examination, did you not?

A. I did sit by them and had some conversation with them; very little.

Q. Did you have conversation with them upon any of the subjects, matters, questions, or points in regard to which they were examining him as a witness?

A. I don't so understand it.

Q. Will you swear that you did not?

A. No, sir.

Q. Was Mr. Dodge examined upon some of the same matters in regard to which you testified on your direct examination?

A. He was.

Q. Then you mean to have it understood, do you, that the subject or matters upon which you conversed with counsel, as you have stated, were entirely foreign to the matters in regard to which he was being examined?

A. No, sir; I had but little conversation with them about anything.

Q. Do you understand chemistry?

A. No, sir.

Q. In the tanning of sheep or lamb skins in bark, do you know whether any, and, if so, what, combinations are formed, or what, if any, chemical changes are produced in the tissues and character of the skin?

A. Not so as to explain it.

Q. In the tanning of such a skin in oil, do you know whether any, and, if so, what, chemical combinations are formed, or what, if any, chemical changes are produced in the tissues and character of the skin?

A. Not so as to explain it; I don't know as there are any chemical combinations.

Q. Are you able to tell what, if any, chemical or mechanical combinations take place, or what, if any, chemical action follows, when fat liquor is applied to bark-tanned skins?

A. I know nothing about chemistry; mechanical is to make
487 it soft and pliable.

Q. But what combinations are formed, or how the fat liquor or its constituents may act upon the skin, or any elements it may contain, you do not know, do you?

A. Yes, sir; the skin contains tan-bark; fat liquor counteracts the nature of the bark and opens the pores of the skin and makes it soft and pliable.

Q. In producing those results, what, if any, combinations are formed between the tan-bark, as you call it, and the fat liquor, or any constituents of the fat liquor?

A. The fat liquor generally destroys the nature of the bark and makes

the skin soft and pliable; oil or fat liquor, either, to bark-tanned leather will always make it softer.

Q. Is that all the answer you can give to the last question?

A. I don't know of any further answer to give.

Q. Do you know whether a bark-tanned skin does or does not contain any other constituent or element than what you term tan-bark?

A. I don't understand that it does; they may contain other things and do sometimes.

Q. What?

A. Sometimes use salt and alum with the bark to tan them.

Q. Are you able to say whether a bark-tanned skin does or does not contain gelatine?

A. I could not say positively; my impression is it does not.

Q. Are you able to say whether an oil-dressed skin does or does not contain gelatine?

A. I cannot state positively but that it contains small particles, but when properly dressed I think it does not.

Q. What is gelatine? State, if you know.

A. It is a subtance found in all raw skins, that will make glue or gluten; I leave off gluten.

Q. Then you think in an oil-tanned and in a bark-tanned skin, the gelatine is all out of the leather, do you?

(Objected to by defendants' counsel.)

A. I do after they are dressed.

Q. Can you tell, in the case of an oil-tanned skin, how the oil acts upon the tissue or fibre of the skin, and whether any, and, if so, what, chemical action or combination is produced?

(Objected to by defendants' counsel.)

A. I know nothing about the chemical action. I know that we pour oil on raw skins, and by working in our mill they are converted into leather when dried. Oil is the only tanning material used.

Q. Is that all the answer you can give to the last question?

A. That is all the answer I can give.

Q. Please state whether in any case in your experience, in which the bark-tanned sheep or lamb skin has become spotted by the action of the alkali or the oily lumps described by you on your direct examination, you have subjected it again to the same liquor and allowed it to remain therein for any further length of time.

A. I know of no case of the kind.

488 Q. Please state the longest time that you ever allowed a batch of bark-tanned sheep and lamb skins immersed by you in warm fat liquor to remain thus immersed in the vessel containing the warm fat liquor, of which you can now speak particularly and positively.

A. I cannot state positively; usually a very short time.

Q. Can you swear to six hours?

A. I can't swear to six hours positively; my impression is I have had them in over night.

On his further redirect examination by defendants' counsel the witness further testified as follows:

Q. Were you, or not, present on the examination of Mr. Dodge to-day until after the close of his direct examination?

A. I was not present in the morning when Mr. Dodge begun his testimony. I don't now remember that I was here at all to-day during his direct examination.

I. V. PLACE.

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Q. Did you have conversation with them upon any of the subjects, matters, questions, or points in regard to which they were examining him as a witness?

A. I don't so understand it.

Q. Will you swear that you did not?

A. No, sir.

Q. Was Mr. Dodge examined upon some of the same matters in regard to which you testified on your direct examination?

A. He was.

Q. Then you mean to have it understood, do you, that the subject or matters upon which you conversed with counsel, as you have stated, were entirely foreign to the matters in regard to which he was being examined?

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Q. Is that all the answer you can give to the last question?

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A. It is a subtance found in all raw skins, that will make glue or gluten; I leave off gluten.

Q. Then you think in an oil-tanned and in a bark-tanned skin, the gelatine is all out of the leather, do you?

(Objected to by defendants' counsel.)

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Q. Please state whether in any case in your experience, in which the bark-tanned sheep or lamb skin has become spotted by the action of the alkali or the oily lumps described by you on your direct examination, you have subjected it again to the same liquor and allowed it to remain therein for any further length of time.

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488 Q. Please state the longest time that you ever allowed a batch of bark-tanned sheep and lamb skins immersed by you in warm fat liquor to remain thus immersed in the vessel containing the warm fat liquor, of which you can now speak particularly and positively.

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Q. Were you, or not, present on the examination of Mr. Dodge to-day until after the close of his direct examination?

A. I was not present in the morning when Mr. Dodge begun his testimony. I don't now remember that I was here at all to-day during his direct examination.

I. V. PLACE.

Subscribed and sworn this 3d day of April, 1873, before me.

J. WENDELL,
Special Examiner.

489 U. S. circuit court, northern district of New York.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

This case is submitted upon the evidence given in the suit of this complainant against Dodge and others.

An additional feature is herein presented, by the recovery of a judgment by this complainant in an action at law against these defendants for an infringement of the patent here in question. Upon an examination of the judgment-record I find that such an action was brought; that the defendant set up the want of novelty and the prior use by the same *previous* called as witness in the Dodge suit, and that judgment passed for the plaintiff.

Ordinarily this would be conclusive against the defendants' establishing: 1st, the validity of the patent; 2d, that the allegation of want of novelty and of the prior use was unfounded.

In the present case, a distinction must necessarily arise, according to the different constructions to be given to the patent. In the
490, 491 suit against Klein, Judge Hall gave to the patent the construction which I have felt obliged to give to it, to wit, that it was a patent for the use of fat liquor in any condition, either hot or cold. In the Place suit, Judge Woodruff held that the patent was for the use of fat liquor in a heated condition.

It is manifest that a judgment based upon this construction presents different questions, and would be based upon different evidence and different conclusions from one based upon the other construction.

Again, in the former suit the question of infringement upon either of the specifications was in issue. The recovery might have been based upon an infringement of the second claim, of which there is no feature on this trial.

Believing, as I do, that in fact the plaintiff is not entitled to recover, I overrule this defence, and direct that in this case also the bill be dismissed with costs.

WARD HUNT.

492 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Nathan C. Russell vs. Isaac V. Place et al. Opinion of Ward Hunt, justice. Filed August 15, 1873.

493 Supreme court of the United States. In equity.

NATHAN C. RUSSELL
vs.
ISAAC V. PLACE AND JOHN W. PLACE.

Know all men by these presents that we, Nathan C. Russell, John Hyman, and Albert W. Locklin, of Gloversville, in the county of Fulton and State of New York, are held and firmly bound unto Isaac V. Place and John W. Place, in the sum of fifteen hundred dollars, to be paid to the said Isaac V. Place and John W. Place, their executors or administra-

tors, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this eleventh day of November, A. D. 1873.

494 Whereas the above-named Nathan C. Russell hath taken an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the northern district of New York, in the second circuit: Now, therefore, the condition of this obligation is such that, if the above-named Nathan C. Russell shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

N. C. RUSSELL. [L. S.]
J. HYMAN. [L. S.]
A. W. LOCKLIN. [L. S.]

Sealed and delivered in presence of—
W. D. WEST.

495 UNITED STATES OF AMERICA,
Northern District of New York, ss:

On this eleventh day of November, A. D. 1873, personally came before me the above-named Nathan C. Russell, John Hyman, and Albert W. Locklin, to me known to be the persons described in and who executed the foregoing bond, and severally acknowledged the execution thereof.

[L. S.] W. D. WEST,
Notary Public.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

Nathan C. Russell, John Hyman, and Albert W. Locklin, of Gloversville, in said northern district of New York, being each duly sworn, does each for himself severally say that he is a resident and freeholder within this State, and is worth the sum of three thousand dollars
496 over and above all debts and responsibilities he owes or has incurred, and property exempt from execution.

N. C. RUSSELL.
J. HYMAN.
A. W. LOCKLIN.

Severally sworn before me this 11th day of November, 1873.

[L. S.] W. D. WEST,
Notary Public.

I hereby approve of the foregoing bond, the penalty, form, and manner of execution, and sufficiency of the sureties.

Dated New York, November 15th, 1873.

L. B. WOODRUFF.

497

498 (Indorsed:) U. S. Supreme Court. Nathan C. Russell, appellant, vs. Isaac V. Place and John W. Place, appellees. Bond on appeal. Horace E. Smith, solr. for appellant. Filed November 19, 1873.

499 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the northern district of New York, in the second circuit.

To Isaac V. Place and John W. Place, greeting:

Whereas Nathan C. Russell has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the northern district of New York, in the second circuit, made in favor of you, the said Isaac V. Place and John W. Place, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

L. B. WOODRUFF,
Circuit Judge.

500 Due and personal service of the within citation is admitted this 19th day of November, 1873.

JAMES M. DUDLEY,
Sol. for Defts.

(Indorsed:) U. S. Supreme Court. Nathan C. Russell, appellant, vs. Isaac V. Place and John W. Place, appellees. Citation. Horace E. Smith, sol. for appellant. Filed November 19, 1873.

501 UNITED STATES OF AMERICA,
Northern District of New York:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Nathan C. Russell vs. Isaac V. Place and John W. Place.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Utica, in said district, this 8th day of October, A. D. 1874.

[SEAL.] CHARLES MASON,
Clerk.

(Indorsement on cover:) No. 134. Nathan C. Russell, appellant, vs. Isaac V. Place and John W. Place. N. New York C. C. U. S. Filed 13th October, 1874.

4-606.

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT FOR NORTHERN DISTRICT OF NEW YORK.

IN EQUITY.

No. 134.

NATHAN C. RUSSELL

v.

ISAAC V. PLACE ET AL.

RESPONDENTS' BRIEF.

T. L. WAKEFIELD, OF COUNSEL.

BOSTON:
ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET.
1876.

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IN EQUITY.

NATHAN C. RUSSELL *v.* ISAAC V. PLACE ET AL.,
APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.

The questions involved in this controversy relate wholly to the *first claim* in the patent, as there was no evidence or pretence of an infringement of the *second claim*.

The hearing before the learned judge at the Circuit involved, —

1*st*. The *construction* of the first claim of the patent. The complainant claimed that his patent is for the use of "fat liquor" in a *heated state;* and the defendants claimed that the patent covers and includes the use of "fat liquor," generally, without reference to the condition in which it may be.

2*d*. The *validity* of the patent which was contested by the defendants upon the following ground, to wit: —

(1.) By reason of want of novelty.

(2.) Because the alleged invention had been in public use or on sale in this country for more than two years before the application for a patent, or had been abandoned to the public, and was void under the fifth subdivision of Sect. 61 of the patent law of 1870.

(3.) Because the reissued Letters Patent are void, not having been granted so far as relates to the first claim *for the same invention*.

3*d*. That the specification does not contain the whole truth, but contains more than is necessary to produce the described effect, and conceals the fact established by the evidence, that fat liquor alone had long been used for softening bark-tanned skins, as well known by the patentee, done for the purpose of deceiving the public, which makes the patent void.

Stat. 1870, Ch. 230, Sect. 61.

4*th*. The question of infringement; the defendants claiming *they had not infringed*.

(1.) That if the construction asked by the defendants should be given to the patent, the *evidence of want of novelty* in the alleged invention was overwhelming, and the patent being void, the plaintiff had no rights under it to be infringed.

(2.) And that if the construction claimed by the complainant should be given, the defendants have never infringed by using heated fat liquor which had been heated to or near the boiling point, nor otherwise than they and others had been accustomed to use it for many years prior to the alleged invention of complainant.

The decision and findings on questions of fact of the learned judge who heard the cases at circuit.

1. The Court gave the construction to the patent asked by the defendants, that the patent by its terms covers and includes the use of fat liquor generally, without reference to the conditon in which it may be; "in other words, the patent secures the exclusive use of fat liquor in any state or condition" for the purpose named in the patent.

Judge Hunt's opinion, pp. 416, 417, 418, 419, 420, marg. from 485 to 492, printed in Record, against Dodge *et al*.

2. Upon the question of *want of novelty* the Court, under the construction given to the patent, found *as a question of fact* that the use of fat liquor in treating bark-tanned skins had been employed by manufacturers, intelligently comprehending its purpose and effect, for many years prior to the complainant's alleged invention, and that the patent as to first claim was void for want of novelty.

Opinion of Judge Hunt, pp. 420, 421, 422, 423, marg. 492 to 497.

3. The Court found as a question of fact that the alleged invention, under the construction given to the patent, had been in public use or on sale in this country for more than two years before the application for a patent, and had been abandoned to the public.

Opinion of Judge Hunt, pp. 423, 424, marg. 498.

4. Upon the question submitted, that the reissued patent is void because it was not for the same invention as the original patent, the Court says "as the points already discussed by me must lead to a decision adverse to the complainant, it is not necessary I should pass upon this point. If the case is taken to a higher tribunal for reconsideration, this with other points will necessarily be passed upon."

Opinion *ante*, p. 424, marg. 498.

5. Upon the question whether the patentee in his specification set forth more than was necessary to produce the required effect, and concealed the fact that fat liquor alone had been used for softening such skins long before his alleged invention, with his knowledge, for the purpose of deceiving the public, the Court made no finding and gave no opinion.

6. The additional feature in this case not found in case against Dodge *et al.*, presented by the recovery of a

judgment by this appellant in an action at law against these defendants for an infringement of the patent, was decided by the Court at Circuit not to vary the result from that in the suit against Dodge *et al.*

Opinion of Judge Hunt in this case, p. 418, marg. 489.

7. The cases having been thus disposed of by His Honor Judge Hunt, upon the construction of the patent stated, the Court made no finding, and gave no opinion upon *the question of fact* raised by the defendants in the event of a construction being given to the patent as claimed by the complainant, that his patent is for the use of fat liquor in a *heated state*, having been heated to or near the boiling point, *either as to infringement by defendants, or want of novelty in the alleged invention with such construction.*

In the light of the state of the art, the evidence and findings of fact in this case, which did not appear in the case of Klein *v.* Russell, in which this Court has given a construction to the patent, we pray for a reconsideration by this Court upon the construction of the patent and to be heard thereon.

I.

The construction. — What is the alleged invention secured by the patent?

1. The patent declares that it is for an "Improvement in the treatment of leather." The patentee states in the specification that he has invented a "new and useful improvement in the preparation of leather," and that his "invention consists in a novel treatment of what is known as bark-tanned lamb or sheep skins;" and claims, —

1st, "The employment of fat liquor in the treatment of leather substantially as specified."

2d, "The process, substantially as described, of treating bark-tanned lamb or sheep skins by means of a compound composed and applied essentially as specified."

2. The *first claim* is for the employment of fat liquor alone generally, either cold or hot, at any desired temperature, in the state in which it comes from the mill, in the treatment of leather substantially as described.

Booth *v.* Kennard, 1 Hurst & N. p. 527.
O'Reilly *v.* Morse, 15 How. ~~49~~. 119
Stevens *v.* Keating, 2 Web. Pat. Cas. 172.
Curtis, sec. ~~288~~. 142-3

(1) The patentee states that the principal feature of his invention consists in the *employment of fat liquor*, describing how it is obtained.

(2) Then says, that in treating with fat liquor, it is *desirable*, not essential, to heat it to or near the boiling point.

(3) That it is "*preferred*," not necessary; it is preferred to use the same in connection with other ingredients as stated; and closing with the claim of "the employment of fat liquor" in treating leather.

3. The second claim is the treatment of bark-tanned lamb or sheep skins by means of the *compound* as described.

(1) Under this claim, the heating of the fat liquor which is mixed with the other ingredients as described, to or near the boiling point, is essential.

(*a*) In describing the compound, the patentee says, "there may be added to each ten gallons of *such heated fat liquor*," the other ingredients making up the compound.

(*b*) The manner of applying the fat liquor or the compound is not a material element; it is enough substantially to *saturate* the leather or skins by dipping them into the liquor, or rubbing it into the skin or leather, or otherwise.

4. The *effect* produced upon the leather or skin by either treatment is not the subject of a patent.

Howe *v.* Abbott, 2 Story, 190, 193.
Curtis on Pat. § 56, and notes (3d ed.)

5. And the article produced by the treatment is not patented or claimed as a new article of manufacture.

If a construction should be given to the first claim, that the application of heat to the fat liquor, and the use of the liquor as described while in a heated state, and that such liquor should be heated to or near the boiling point, it must follow, either that it is to be applied at that temperature, *in which case it is pernicious, and will spoil the skin*, and the patent is void for want of utility: or that it must cool before use, in which case *no limit* is made as to the temperature to which it should cool before use. And this must be learned by *experiment* by every operator, and the patent is void for uncertainty and ambiguity.

Wood *v.* Underhill, 5 How. 4.

6. The proportions of such compound are not fixed, but are in all respects indefinite and uncertain, to be ascertained only by trial; and the process of preparing leather by means of such compound is not patentable.

Tyler *v.* Boston, 7 Wal. 327.
Wood *v.* Underhill, 5 How. 1.
Parker *v.* Stiles, 5 McLean, 54.

II.

The reissued Letters Patent are void, because they were not granted for the *same invention* as that embodied in the original Letters Patent.

1. Whenever any patent is inoperative or invalid by reason of a defective or insufficient description or specification, if the error arose by inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it is lawful for the commissioner, upon the surrender to him of such patent, and the payment, etc., to cause a new patent to be

issued to the inventor for *the same invention* for the residue of the term then unexpired, in accordance with the patentee's corrected description and specification.

5 Stat. at Large, 122.

(1) Reissued Letters Patent must, by the express words of the statute, be *for the same invention;* and consequently, when it appears, on a comparison of the two patents as matter of legal construction, that the reissued patent is not for the same invention as that embraced and secured in the original patent, the reissued patent is invalid, as that state of facts shows that the commissioner, in granting the new patent, exceeded his jurisdiction. Interpolations of new features, ingredients or devices, which were neither described, suggested nor indicated in the original patent or Patent Office model, are not allowed, as it is clear that the commissioner has no jurisdiction to grant a reissue unless it be for the same invention as that embodied in the original Letters Patent.

Seymour *v.* Osborn, 11 Wallace, 544, 545, 546.
Battin *v.* Taggert, 17 How. 83.
Sickles *v.* Evans *et al.*, 2 Clifford, 203, 222.
O'Reilly *v.* Morse, 15 How. 111, 112.
Allen *v.* Blunt, 3 Story, 744.

(2) Whether a reissued patent is for the same invention as that embodied in the original patent, or for a different one, is a question for the Court in an equity suit, to be determined as a matter of *construction* on a comparison of the two instruments.

Seymour *v.* Osborne, *ante.*
Sickles *v.* Evans *et al.*, *ante.*
Rubber Co. *v.* Goodyear, 9 Wal. 796.

2. Upon the face of the original and reissued patents, upon comparison it appears as matter of law that they are not for the same invention, and hence the reissued patent is void.

(1) The original patent had but one claim, substantially the same as the second claim in the reissued patent.

(2) This was for the treatment of bark-tanned lamb and sheep skins (not leather) with the same compound as in the reissue.

(3) The patentee states in his original specification that it is "a full, clear and exact description" of the invention. That "his invention consists in a novel treatment of bark-tanned lamb or sheep skins." That "the process he adopts and which constitutes his invention, is as follows:" — here stating the ingredients of the compound and proportions substantially as stated in the reissue, and describing only the mode of applying the compound to the skin, of brushing it into the skin, as described in the reissue; closing with the claim stated.

(*a*) In the comparison it will be seen that the original claimed only the treatment of bark-tanned lamb and sheep skins with the specific compound brushed or rubbed on, — neither describing, suggesting nor indicating the treatment of leather generally at all, nor such skins with fat liquor alone without said ingredients, nor the saturating by dripping. Upon the face of the two patents, the old was for treatment with the *compound* alone; and the reissue is primarily for treatment with *simple fat liquor* alone, stating only that the patentee "*preferred* to use the same in connection with other ingredients"; and, after describing the compound, stating that "this forms a good treating mixture or compound," and closing with the second claim. It is simply for such treatment with simple fat liquor as it comes from the mill (which is in no way indicated in the original), interpo-

lated with the sole treatment and sole claim specified in the original, which is now suggested only as a "preferable" way, and secondary to that of fat liquor alone.

3. The specification does not contain the whole truth, but contains more than is necessary to produce the described effect, which fully appears to have been made for the purpose of deceiving the public; and on that account the patent is void.

Stat. 1870, ch. 230, § 61.

(1) It conceals the fact established by the evidence as well known in the trade, that fat liquor alone had been long used for softening leather, as found by the Court at Circuit.

(2) It conceals the fact that complainant knew generally of the use of fat liquor for said purpose long before obtaining his original patent.

(*a*) And with such knowledge he obtained his patent for treatment with the compound only.

(*b*) Then, finding that simple fat liquor alone would accomplish the same results as his compound, he sought a reissue, making the treatment with simple fat liquor, with or without heat, the basis of his invention and first claim, into which is interpolated as "desirable" and "preferred" the treatment with the heated compound which constituted the entire subject and claim of the original patent.

(*c*) This claim, that the new matter in the reissue which was not in the original patent was a part of the same original invention, was fraudulent, for the purpose of deceiving the public, and the patent void.

(*d*) The complainant, in surrendering the original patent and procuring the reissue, made oath that the original patent was *inoperative and invalid* by reason of a defective or insufficient specification; whereby he is estopped from now claiming that the same identical thing, repeated in the specifi-

cation and second claim of the reissue, standing independent of all additional or new matter, is valid.

(*e*) Between the date of the original patent, Aug. 17, 1869, and the application for the reissue, Jan. 12, 1870, and just previous to such application, Mr. Fulton, the partner and son-in-law of complainant, and the one who applies for complainant his alleged process, visited the factory of defendants Place twice, to observe carefully the method of treatment of bark-tanned lamb and sheep skins with fat liquor; saw them treated by *dipping*, etc., with the same identical process set out in the specification, filed Jan. 12, 1870, for the reissued patent.

Dep. of C. B. Wessels, pp. 267 to 268 inclusive, marginal 317 —

Dep. of John W. Place, pp. 263–265, marginal 313, 314.

These visits were, one the last of December, 1869; the other in the fore part of January, 1870.

Wessels, p. 267, marginal 317.

J. W. Place, p. 263, marg. 313.

John Fulton, as to first visit Dec. 31, 1869, p. 277, marg. 329, p. 279, 280, marginal 331–332.

Fulton was there, without apparent business, a quarter to half hour each time.

Dep. of Wessels, p. 267, 268, marg. 317.

Dep. of J. W. Place, pp. 263, 264, marg. 313.

Dep. of Fulton, pp. 279, 280, marg. 331–332.

Defendant suggests, as further evidence of such purpose of deceiving the public, that it was then and there, through his son-in-law, partner and operator, that the complainant learned of the defendants Place the specific process de-

scribed in his first and additional claim in the reissued patent.

(*f*) Mr. Fulton is called in rebuttal, and replies, (1) that one of his visits to said Places' factory was after the 1st of February, 1870, when the reissue was dated; (2) that his purpose was to learn whether or not defendants Place were infringing, claiming to confirm his evidence by a memorandum book, and by a statement that complainant used and employed the same process only after the reissue as before.

Page 277, marg. 329.

(1) The purpose in going there, as stated by Mr. Fulton, viz. to see if the defendants Place were infringing the patent, is improbable, if that was while the complainant believed his original patent was inoperative and invalid for the reasons stated, and sworn to only two weeks after for the purpose of obtaining the reissue.

(*a*) He had heard previously said defendants were treating such skins with *fat liquor*.

Dep. of Fulton, p. 280, marg. 332.

(*b*) But suppose the alleged was the true purpose of that first visit, Dec. 31, 1869, to said defendants' factory.

He did not find said defendants infringing, but using only *fat liquor*.

Fulton, p. 279, marg. 331.

(*c*) We submit complainant had heard that defendants Place were treating skins with fat liquor alone, and this son-in-law and partner went there to learn as to the fact and the method of doing it, and in two weeks thereafter surrendered his old patent, and made the new additional claim for treatment with fat liquor alone, by dipping, etc. He has stolen

said defendants' business, and incorporated it into his patent, and now brings suit againt them for infringement by continuing their said business.

(*d*) He had *experimented* with fat liquor alone, by dipping, etc., from 1866 to spring of 1869, when he claimed to have perfected his invention, and applied for his patent with his specification and claim for the compound only.

Dep. of Fulton, pp. 34–38, marg 67, 68, 69, 70.

(*e*) His treatment during this time was therefore claimed as only experimental with fat liquor alone till spring of 1869, when it was discarded, and the treatment with the compound then ripened into invention, and was alone used till Fulton witnessed the treatment by defendants Place, Dec. 31, 1869, when, thereupon, in two weeks thereafter, without further experiment, his previous experiments with fat liquor alone had ripened suddenly into invention, and the original patent was surrendered as inoperative, and this newly fledged invention of the use of fat liquor alone made the primary invention, and the compound barely secondary.

Dep. of Fulton, pp. 37, 38, marg. 70, 71.

(*f*) The complainant practically used the second claim, viz. treatment with the compound, as his invention.

Dep. of Fulton, pp. 37, 38, *ante*.
Dep. of Fulton, p. 286, marg. 338, 339.
Dep. of Fulton, p. 289, marg. 341, 342.

(2) The memorandum book on which he bases his contradiction of defendants' witnesses in part, is suspicious, both from *inspection* and witness' statement in relation to it.

Pages 280–284, marg. 332, 333.

Only two occasions are noted on the book, although he was there several other times; and thirty blank leaves occur immediately preceding the entry, and ten leaves following, of dates from Aug. 1868 to Feb. 1871, while the previous memoranda of fourteen leaves cover the time from Nov. 1869 to Sept. 1872. The year is not entered with the entry of Feb. 14, and this is the only memorandum book or diary witness had kept since 1867 to the time of giving his evidence.

All appears to be written at once with the same pen and same ink.

(3) The other ground of alleged confirmation of his evidence is, that plaintiff made no change in his process or mode of treatment of bark-tanned sheep and lamb skins after his first application for a patent in 1869, and before the reissue in 1870.

Dep. of Fulton, p. 275, marg. 325; and this treatment was with the compound by brushing.

(*a*) If this be so, when did his discarded experiments with fat liquor alone, applied by dipping, mature into invention previous to his application for a reissue?

III.

The complainant, patentee, was not the original and first inventor or discoverer of any material and substantial part of the thing patented.

(1) The use of fat liquor alone in the treatment was a material and substantial part of the thing patented; and if this was in prior use and not new with the plaintiff, his patent was void.

Pitts *v.* Hall, 2 Blatch. 234.

Parker v. Stiles, 5 McLean 54; Laws' Dig. 528.

said defendants' business, and incorporated it into his patent, and now brings suit againt them for infringement by continuing their said business.

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III.

The complainant, patentee, was not the original and first inventor or discoverer of any material and substantial part of the thing patented.

(1) The use of fat liquor alone in the treatment was a material and substantial part of the thing patented; and if this was in prior use and not new with the plaintiff, his patent was void.

Pitts *v.* Hall, 2 Blatch. 234.

Parker v. Stiles, 5 McLean 54; Laws' Dig. 528.

Parker *v.* Sears, 1 Fisher, 99; Laws' Dig. ~~580~~. 529
Smith *v.* Downing, ~~1 Fisher, 70~~; " ~~580~~. 529
Evans *v.* Eaton, 7 Wheat. 434.
U. S. Stat. 1870, ch. 230, § 61.

(2) The evidence is clear and uncontradicted that the use of fat liquor for the purpose of softening leather generally, in the manner substantially set forth in the Letters Patent, had been known and in almost universal use among manufacturers of leather for many years prior to complainant's alleged invention.

Dep. of James Christie, pp. 58 to 65, marg. 95 to 103.
Dep. of Jonathan Ricketts, pp. 76, 77, marg. 116, 117, inclusive; pp. 80, 81, marg. 121; p. 82, 83, marg. 123, 124.
Dep. of Aaron Simmons, pp. 137, 138, 139, marg. 181, 182, 183, 185.
Dep. of Isaac V. Place, pp. 152, 153, 154, marg. 199, 200, 201.

This use included treatment of the Indian tanned skins.

Dep. of James F. Place, p. 253–4, marg. 302, 303.
Dep. of Ricketts, p. 80, 81, marg. 121; and p. 85, marg. 127.
Dep. of Aaron Simmons, who so treated them fifteen or eighteen years ago, p. 137–8, marg. 181, 182, 183, 184.

1. *If fat liquor alone had been used for more than two years prior to plaintiff's alleged invention in the manner indicated for the purpose of rendering any kind of leather soft and pliable, the patent cannot be sustained, even if it had not before been applied to bark-tanned lamb and sheep skins.*

(1) It would be the specific treatment and invention

claimed in the first claim of the patent, and such prior use would invalidate the patent.

(2) If the patent be construed as limiting the treatment to bark-tanned sheep and lamb skins, it would then be *only a substitution, or the application of an old thing to a new purpose* — a double use which is not the subject of a patent.

(3) "A mere application of an old contrivance in the old way to an analogous subject, without any novelty or invention in the mode of applying such old contrivance to the new purpose, is not a valid subject matter of a patent."

Harwood *v.* Great Northern Railway, 11 H. of Lds. Cas. 654, 667, 673, 682, 684.

Same in 2 Best & Smith, 222, 224, etc.

The subject-matter of the patent in question in that case was the application of a grooved plate, known as a "fish," to the sides of two contiguous rails of a railway for the purpose of binding together their abutting ends: and it was held to have been anticipated as a patentable novelty by the previous application of a channelled iron plate underneath the abutting ends of two contiguous bridge timbers, the purpose served by each being to resist vertical strain and to receive the heads of the bolts into the grooves or channels.

Lord Chancellor Westbury said: "It would be an idle thing, if it were possible, to take a well-known mechanical contrivance, and by applying it to a subject to which it has not hitherto been applied, to constitute that application the subject of a patent to be granted as for a new invention."

Mr. Justice Blackburn, in a dissenting opinion upon the facts, laid down the same principles of law as unquestioned; and says: "In every case arises a question of fact whether the contrivance before in use was so similar to that which the patentee claims that there is no invention in the differences, if any, between the old contrivance and that for which the

patent claims a monopoly; and if there is none, there arises the further question of fact, viz., whether the purpose to which the contrivance was before applied and the new purpose are so *analogous* or *cognate* that there is no discovery or invention in the new application."

In the case at bar it is established as fact, and undisputed by evidence, that fat liquor had been used many years, at least thirty, before the alleged invention by the patentee, generally in the trade to make skins and leather, including bark-tanned skins of some kinds, soft and pliable, and was applied in substantially the same way described in the specification and for the same purpose.

And this claim rests solely on the alleged new application of fat liquor to bark tanned sheep and lamb skins.

(*a*) In this case it is manifest that the *new purpose*, viz. the application of fat liquor to bark-tanned lamb and sheep skins, is so analogous and cognate to that of such prior purpose and use that it falls within the rule, and is not patentable.

In Hotchkis *v.* Greenwood, 11 How. 248, 264, the same doctrine is stated.

The facts presented were in substance that a knob of potter's clay was applied to or combined with its shank and spindle by means of a dovetailed cavity and an infusion of melted metal, and knobs of metal and wood had been previously combined with the same kinds of shank and spindle in the same way.

It was held that such a substitution of one well-known material for another was not patentable, although there might be utility and a certain degree of novelty attained.

In the case at bar, the only change in the patent from the prior use is the application of fat liquor to bark-tanned lamb and sheep skins, instead of making the same application to other leather, and even other bark-tanned skins, for the same purpose.

The case of Bean *v.* Smallwood, 2 Story, 408, 411, enunciates the same rule.

The question was whether the application of certain locking devices to a well-known form of a rocking-chair, by means of which the reclining back of the seat could be fastened at any desired inclination, was a subject of a patent, it appearing that such devices were old and had been applied to purposes of a similar nature in other machines, although not to chairs. Judge Story held that the application of the locking devices to the chair was merely the application of an old mechanical contrivance to a new purpose, which was not patentable. Such an application he compared to the use of a coffee-mill to grind corn.

In Winans *v.* Boston & Providence R. R., 2 Story, 412, 415, the main question in issue was whether the application of axle-boxes outside of the wheels of railway carriages — the axles being extended beyond the wheels for that purpose — could be the subject of a valid patent, it being proved that the application had previously been made to other wheeled carriages; and Judge Story held that the patent could not be maintained.

In Losh *v.* Hague, Web. Pat. Cases, 202, 207, 208, the patent was for the application of a certain wrought-iron wheel to railway carriages, such wheels having been previously used on other carriages. Lord Abinger says, in substance, "If this wheel has been constructed long before the plaintiff's patent, that although there were no railroads then to apply them to and no demand for such wheels, yet that the application of them to railroads by Mr. Losh will not give effect to his patent if part of that which is claimed as a new improvement by him is in fact an old improvement invented by other people and used for other purposes."

In Regina *v.* Cutler, 3 Carr. & Kir. 215, 228, 230, 234, the third claim of the patent was as follows: "I claim the application of either iron or steel tubes when coated with

copper, brass, or other alloys of copper, in the construction of tubular flues for steam boilers." Lord Denman, C. J., said, "With regard to the third of those claims, in which the defendant Cutler claims application of tubes in the construction of tubular flues, it appears to me that he has no right to take out a patent for the mere application of particular things to any particular purpose. If he had made a new combination, that might have been a new discovery and a proper subject of a patent; but I think Lord Abinger's illustration is a striking one and applicable to the present case; it is like sweeping a carpet of a new manufacture with an old broom." He further said, "And in general terms, I think the application of an article to produce any particular result, the party having no claim either to the mode of producing the article or to the mode of applying it for attaining that result, forms no ground of a patent. The coated tubes mentioned in the specification are not new, and I think, therefore, that the third part of the invention which is claimed in this specification cannot be made the subject of a patent."

In Jordan *v.* Moore, L. R. & C. P. 624, 635, the patentee claimed the construction of ships and other vessels that navigate on water with an iron frame, combined with an extra covering of timber planking for the sides, bilges and bottoms, it appearing that wood had been previously used for the same purpose. Mr. Justice Byles, in delivering the opinion of the Court, said, in substance, "It is the substitution of one well-known analogous material for another, that is, wood for iron, to effect the same purpose on an iron vessel"; and held it was not the subject of a patent.

In Brooks *v.* Aston, 8 El. & Bl. 478, 485, it was held that the application of a machine for polishing cotton or linen thread to the new purpose of burnishing yarns of wool or hair was not the subject of a patent.

The same doctrine was applied by Judge Story in Howe

v. Abbott, 2 Story, 190, 193, 194. The question in issue was whether there was any patentable noveity in twisting and curling palm leaf for mattresses and cushions by the same process that had previously been used in twisting and curling hair for the same purpose. The Court held it was not the subject of a patent.

See Phillips *v.* Page, 24 How. 164, 167.
Bottle Envelope Co. *v.* Seymer, 5 C. B. (N. S.) 164.
Bush *v.* Fox, 5 H. of Lds. Cas. 707, 715–6.
Leroy *v.* Latham, 14 How. 177.
Russell *v.* Klein, charge, p. 148, fol. 726.
Baulton *v.* Bull, 2 H. Bl. 487.

It is no answer to this view of the case and fatal result to the patent, that the fat liquor acting upon oil-tanned skins combines differently, either chemically or mechanically, with the tissues of the skin, than when acting upon a bark-tanned skin, as claimed or suggested by Dr. Porter; since he states, with all others, that the general effect upon the leather or skins, to make them soft or pliable, is the same.

Dep. of Chas. H. Porter, pp. 394–5, marg. 461.
" " p. 395, marg. 462.
" " pp. 400, 401, marg. 468, near end.

This alleged difference, as stated by Dr. Porter, *is not in the process, but in the material subjected to the process.*

Dep. of Porter, p. 401, marg. 469.

But the same treatment had been applied to other kinds of bark-tanned skins.

Dep. of I. V. Place, p. 165, marg. 212.
" Uriel Case, p. 169, marg. 217.

2. *If a construction should be given to the first claim of the patent, that as a requisite element of the invention the fat*

liquor must be heated to or near the boiling point before use, then the defendants have never infringed the patent, because they have never so heated the liquor.

Dep. of Samuel Dodge, Sen., pp. 199, 200, marg. 248, 249; and p. 231, marg. 281.
Dep. of I. V. Place, p. 154, marg. 200–1.
" J. W. Place, p. 183, marg. 231, end.

It is confirmed by the fact that the defendants in both cases deem heating the liquor to or near the boiling point before use, to be very injurious.

3. Heating the fat liquor to or near the boiling point has no utility, and is positively injurious in the treatment of the skins. If applied hot it spoils, and if allowed to cool, spots and stripes them (by reason of the emulsion not being perfectly restored). If an essential element, it avoids the patent for want of utility.

Isaac V. Place, pp. 412, 413, marg. 482.
Samuel Dodge, Sen., p. 407, marg. 476–7.
" " " p. 224, marg 274.

Charles H. Porter says the heat separates the oily matters, etc., but by warming and agitating the liquor an emulsion was obtained *apparently similar* to that which previously existed in the fat liquor.

Dep. of Porter, p. 396, marg. 463, near end.

On the other hand, Isaac V. Place and Samuel Dodge, Sen., speaking as practical men, say the oily spots or streaks in the mixture will spot or stripe the skin.

And if applied hot it spoils the skin.

Dep. of Porter, p. 402, marg. 471.
" I. V. Place and Samuel Dodge, *ante*.

(*a*) If the alleged infringement in this particular of heating was by mixing hot water with cold fat liquor, —

(1) That is not the process indicated in the patent.

(2) It is in no sense heating the fat liquor to or near the boiling point.

(3) The defendants heated the fat liquor for the purpose, so as to be comfortably worked in with the hands, *which was generally done and well known prior to the alleged invention.*

Dep. of Aaron Simmons, p. 137, marg. 181, at end.
" Isaac V. Place, pp. 153, 154, marg. 200.
" Ricketts, p. 75, marg. 116.
" Filmer, p. 87, marg. 128.
" S. Dodge, Sen., p. 193, marg. 242.
" " " p. 194, " 243.
" " " p. 194, " 244.
" " " pp. 195 to 201 inclusive, marg. 244, 245 to 248 inclusive.
" J. L. Northrup, p. 68, marg. 106 and 107.
" Heacock, p. 121, marg. 163.
" Hull, p. 123, marg. 167.
" Chapman, p. 132, marg. 176.
" Uriel Case, p. 168, marg. 216.
" J. W. Place, p. 182, marg. 231.
" Samuel Dodge, Jr., p. 236, marg. 286, 287.
" Whiting, for complainants, p. 45, marg. 79.
" Green, for complainants, p. 54, marg. 89.
" Putman, p. 57, marg. 93.

Complainant's evidence of infringement shows only the use of warm fat liquor.

Dep. of Mills, p. 14, m. 37.

Moreover, in preparing the fat liquor by defendants Dodge, the warm water was first prepared in the tub used for the treatment, then after that the fat liquor put in.

Dep. of S. Dodge, Sen., p. 195 to 199, marg. 244 to 248 inclusive.

(4) Increasing the degree of heat is not patentable; it is a mere colorable variation, and is a matter of degree, and not of principle.

But there was no change as to heating after the patent.

Dep. of Dodge, p. 210, marg. 260.

(5) But if it be held as matter of law that the application of the same treatment to bark-tanned lamb and sheep skins as had been applied long before the complainants alleged invention to other kinds of skins and leather is the subject of a valid patent, the patent is still invalid for *want of novelty*.

(*a*) The evidence is full and conclusive of such treatment for the same purpose of bark-tanned lamb and sheep skins prior to the alleged invention of the patentee.

Samuel Dodge, Sen., a kid-dresser and finisher, of thorough English training for fourteen years preparatory in learning his trade, and with great experience in the practical business, testifies plainly and fully upon this point.

His dep. p. 192, marg. 241–242.

He has been acquainted with fat liquor used in dressing leather for mittens and gloves for at least fifty years, and first used it in this country in Johnstown, Fulton County, N. Y., twenty-three or twenty-four years ago, for Jonathan Ricketts.

His dep. p. 193, marg. 242.

He treated for Mr. Ricketts 300 or 400 dozen of such skins, of which about three fourths were treated with simple fat liquor alone; the liquor was warmed to about blood-heat, and the skins were dipped into it and saturated with it.

His dep. pp. 193, 194, marg. 242, 243.
" pp. 211 to 217, marg. 262 to 268.

He selected out about one fourth from those he did for Ricketts, such skins as were "too heavy, and what we call bark-bound, tanned in too warm liquor, and dissolved some carbonate of ammonia, and put the skins into it"; then, after drying, mixed up a liquor for them of "oil, eggs and warm water," and saturated them in it, and then dried them. These were so selected and treated because the fat liquor alone would not do for that class of skins.

His dep. pp. 193, 194, marginal 243.
" pp. 215, 216, " 266.
" p. 215, " 265.

These were made soft and pliable, suitable for mittens and gloves, with the squeak removed.

Jonathan Ricketts confirms Mr. Dodge upon this point of his evidence. It was in 1850 or 1851 he did first lot.

His dep. pp. 75, 76, 77, marg. 115 to 118.
" pp. 77, 78, 79, marg. 118, 119, 120.

John Filmer also confirms this evidence as to second lot in 1852.

His dep. pp. 86, 87, marg. 127, 128.

Mr. Dodge treated bark-tanned sheep and lamb skins with fat liquor alone for Messrs. Churchill, in Gloversville, about twenty years ago in the same way, for the same purpose of softening, etc., and with the same effect in 1852 and 1853.

His dep. p. 194, marg. 243.
" p. 219, marg. 269.

He treated some with the same process, for the same purpose and with the same effect, for David Spaulding, of Gloversville, about twenty years ago.

His dep. pp. 194, marg. 244.

He applied the same process, for the same purpose, etc., for Edward Dunson, of Gloversville, about sixteen or seventeen years ago.

His dep. p. 195, marg. 244.
" pp. 219, 220, marg. 270.

He applied the same process, with like effect, for Samuel Gilchrist, in Gloversville, about twenty years ago.

His dep. p. 195, marg. 244.
" p. 220–21, marg. 271, 272.

He treated in like manner, with same effect, for Chapman & Warring, of Amsterdam, and Logan & Warring, also, about fifteen years ago.

His dep. pp. 195, marg. 244, 245.
" p. 222, marg. 272.

Upon this occasion Mr. Dodge is confirmed by *James B. Chapman*. It was in 1857.

His dep. p. 132, marg. 176–7.
" p. 136, marg. 180.

Mr. Dodge applied the same process, with same effect, for Daniel B. Judson, of Gloversville, about fifteen years ago.

His dep. p. 196, marg. 245.
" p. 222, marg. 272.

Mr. Dodge is confirmed in this evidence by Daniel B. Judson.

Dep. of Judson, p. 261, marg. 310.

Also, for Philander and David Heacock, of Kingsboro', about fourteen years ago.

His dep. p. 196, marg. 245.

Philander C. Heacock confirms Mr. Dodge in this evidence.

Dep. of Heacock, p. 121, marg. 164.

He is also confirmed by his son, Samuel Dodge, Jr., as to the application of this same process for Messrs. Heacock, D. B. Judson, Mr. Dunson and Mr. Gilchrist.

Dep. of Samuel Dodge, Jr., p. 238, marg. 287.
" " " p. 239, 240, marg. 289–290.

Mr. Dodge treated in like manner such skins for Mr. Nickerson about thirteen years ago.

His dep. p. 196, marg. 246.

Also for Daniel B. Judson in 1869.

His dep. p. 197, marg. 246.
" p. 223, marg. 273.
" p. 202, marg. 252.

Confirmed in this by Daniel B. Judson.

His dep. p. 261, 262, marg. 310, 311.

He treated several different lots for said persons and firms, and at different ti nes.

His dep. p. 203, marg. 253.

Mr. Dodge's process of preparing the liquor and treatment with fat liquor alone such bark-tanned sheep and lamb skins as were found suitable by him for such treatment, the last two years, or since the patent.

His dep. 198, marg. 247.
" 200, marg. 249, 250.

This treatment the same since the patent as before.

His dep. p. 198, marg. 247.

He also manufactured his fat liquor sometimes, when wanted, of a different quality or degree, of alkaline strength, to adapt it to the skin.

His dep. p. 202, marg. 251.
" pp. 198, 199, marg. 248.
" pp. 226, 227, marg. 276.

This is called by kid dressers, "*gum.*"

His dep. p. 227, marg. 276.

Mr. Dodge told James Chapman how to treat such skins with fat liquor fifteen years ago.

His dep. p. 204, marg. 254.

He was the same Chapman that testified in this case.

His dep. p. 232, marg. 282.

He also told Mr. Russell, the complainant, how to treat them eight or nine years ago.

His dep. p. 204, marg. 253, 254.
" pp. 227–8, marg. 279.

Those treated by the fat-liquor process, during the many years as stated, were as soft and pliable and as suitable for gloves as the exhibits produced by the defendants. Nos. 3, 4, 5 and 6, treated in the same manner, according to the quality of the skin.

His dep. p. 207, marg. 257.

And as to the treatment of said exhibits, see his evidence, pp. 205, 206, marg. 255, 256.

From the various quantities of such skins furnished him by different manufacturers to be softened and made suitable

for gloves, he selected those unsuitable for any cause for such treatment, and treated them differently according to the requirement, viz. with a "*solution of carbonate of ammonia*," when the skins are tanned in hot liquor, and are drawn up, or bark-bound, as they call it.

His dep p. 232, marg. 281.
" p. 193, marg. 243.

With "carbonate of ammonia, oil of vitriol, and common salt," referred to as his secret process, with or without eggs, to the hardest and thickest kinds.

His dep. p. 208, 209, marg. 259.
" p. 232, marg. 281–2.

Kid skins with alum, salt and eggs.

His dep. p. 202, marg. 252.

With sal-soda and soap when the liquor is sour.

His dep. p. 232, marg. 281.

The manufactured fat liquor to be applied when the liquor from the mills had too much alkali for the particular skins to be treated, made of neats-foot oil, sal-soda and soap.

His dep. p. 233, marg. 282.
" p. 233, marg. 283.
" p. 198, marg. 248.

Kid skins are tanned with alum and salt, and are treated with this manufactured fat liquor.

His dep. p. 202, marg. 251, 252.

He made this fat liquor first in this country twenty-seven years ago, and nearly every year since.

His dep. p. 202, marg. 251.

The discrimination as to the method of applying the fat liquor to the skins, was made by him according to the condition of the skin, or use to be made of the leather.

His dep. p. 233, marg. 282, 283.

Hence, when he used the various ingredients combined and applied differently, as in his dep. pp. 232, 233, marg. 280, each different combination and application was determined on by him according to the character and condition of the skin, and the use to be made of it; and the process was varied to meet the varying qualities and conditions of the skins.

In the evidence given at Utica by him, relating to his treatment of such skins, he stated, generally, the different ingredients used, and was not inquired of generally under what conditions and circumstances the different elements were differently combined and applied. See his evidence as reported by Mr. Tinsley, if competent, pp. 306 to end of 313, marg. 361, 369.

The qualities and conditions of the skins varied greatly according to the animal from which taken, the time of year they were taken off, the treatment in tanning, etc.

Dep. of I. V. Place, p. 154, marg. 201.
Dep. of Gillette, pp. 332, 333, marg. 390.
Pages 338, 339, marg. 397, end.

And as before stated in dep. of Samuel Dodge, Sen., and undisputed.

Isaac V. Place, of great experience in the business of dressing leather and manufacturing gloves and mittens, doing an extensive business for nearly forty years at Gloversville, also testified on this point.

He has used fat liquor in dressing skins every year, more

or less, since 1835, and has well known during all that time of the purpose and effect of such use of fat liquor to make the skins soft to which it was applied and suitable for gloves.

His dep. pp. 152, 155, marg. 199, 200.

He first learned the use of fat liquor to soften glove leather thirty-nine years ago, and soon after applied it to bark-tanned sheep and lamb skins, fixing the first *definite* time in 1856.

His dep. p. 153, marg. 199.
" p. 154, marg. 201.

In 1856 he applied the process of treating such skins with fat liquor, and procured the same effect described in the patent.

His dep. p. 153, marg. 199.

In 1857 he applied the same process with similar effect.

1858, the same.

His dep. p. 153, marg. 200.
Dep. of J. W. Place, p. 183, marg. 232.

His evidence as to those treated in 1857, he is confirmed by Henry E. Krause.

Dep. of I. V. Place, p. 154, marg. 200.
" " " p. 159, marg. 206.
" " " p. 155, marg. 202.
Dep. of Krause, p. 110, marg. 152.
" " p. 114, marg. 157.
Also by Uriel Case, p. 169, marg. 217.

These were assorted and used, a part for mittens and part for gloves.

Dep. of Krause, p. 116, marg. 159.

Also confirmed by James F. Place.

His Dep. pp. 249, 251, marg. 298, 299, 300.
" pp. 258, 259, marg. 307, 308.

In 1862 I. V. Place so treated such skins with like effect, about four hundred dozen.

His dep. pp. 153, 154, marg. 200.
" pp. 159, 160, marg. 206, 207, verified by his books.

The circumstances which enable him to fix the time in 1862.

His dep. p. 165, marg. 213.

He also used the same process in the softening bark-tanned skins of other animals with the same effect.

His dep. p. 154, marg 201.
" p. 158, marg. 205.
" p. 161, " 208.
" p. 167, " 215.

James L. Northrup treated bark-tanned sheep and lamb skins with the same process and effect as claimed in the patent, at Broadalbin.

First in 1854 and 1855, about fifty dozen.

His dep. pp. 67, 68, marg. 106, 107.

Also in 1856 and 1857.

His dep. pp. 68, 69, marg. 107.

He had known of such use of fat liquor by one Laufer for him in the year 1849 and 1850.

His dep. p. 72, marg. 112.
" pp. 74, 75, marg. 114, 115.

Mr. Northrup fully understood the effect of such treatment and the kind and quality of skins to which it should be applied alone, and to what with other ingredients, and applied it warm.

His dep. pp. 67, 68, marg. 106, 107.
" pp. 69, 70, " 108, 109.

About one third with fat liquor alone and two thirds with fat liquor and other ingredients, viz. soft soap or salt or alum or oil, as the skins required.

His dep. p. 69, marg. 106.

He prepared for and assisted P. C. and D. G. Heacock in preparing fat liquor and treating such skins with this process.

His dep. p. 69, marg. 107, end.
" pp. 71, 72, marg. 110, 111.

He sold goods made from such skins treated by the same process, and found them in market.

His dep. p. 70, marg. 109.
" pp. 71, 72, marg. 111.

Mr. Northrup is confirmed by James B. Chapman.

His dep. pp. 132, 133, marg. 176, 177.

He saw Mr. Northrup treat some with fat liquor alone, and some with that and other ingredients.

His dep. p. 132, marg. 176.
" p. 136, " 180, end.
" p. 135, " 179, "

He sold gloves made from leather so treated, for I. V. and J. W. Place, defendants, for some ten years.

His dep. p. 133, marg. 177.

Mr. Northrup is confirmed by P. C. Heacock.

His dep. p. 121, marg. 164.

Philander C. Heacock treated such skins with same process and effect — commencing in 1862, 1863.

His dep. p. 121, marg. 163, 164.

Some were treated with fat liquor alone, and some with fat liquor, sal-soda, eggs and soap.

His dep. p. 122, marg. 165.

James L. Northrup instructed him in this process.

Dep. p. 121, marg. 164.

He is confirmed by Mr. Northrup.

His dep. p. 69, marg. 107; p. 71, marg. 110, 111.

In rebuttal, —

Hiram Freeman *did not know it* — except the use of eggs and soap.

His dep. pp. 386-7, marg. 452,

which in no way affects Mr. Heacock's evidence.

Wm. H. Monroe applied the same process with like effect, in Dedham, Mass. (about twelve years), and in Gloversville (about fifteen years), from 1851 to 1869.

His dep. pp. 88, 89, 90, marg. 130, 131.

He treated them with fat liquor alone, and with oil and soap, and with salt, alum and eggs.

His dep. pp. 88, 89, marg. 130, 131.

The fat liquor used at Dedham was made by oil and alkali.

His dep. p. 98, marg. 140.

Same as one kind named in the specification of the patent.

Page 18, marg. 44.

It was a well-known process to him, and had been for eighteen or twenty years.

His dep. pp. 89-90, marg. 131.

Mr. Monroe is confirmed by the plaintiff's witness, *Mr. Gillette*.

Dep. of Monroe, p. 88, marg. 130.
" Gillette, p. 322, marg. 378.

And with other ingredients.

Gillette's dep. p. 322; marg. 378.

The "dampening down," so called, may take the squeak out.

Dep. of Gillette, p. 324, marg. 380.

Mr. Gillette, a lawyer and leather dresser, having examined the patent and used the process, defines the "Russell process" to be "the application of fat liquor, with a portion of salt, sal-soda and soap dissolved in it, and heat to or near the boiling point, and when sufficiently cooled, applied with a brush or by immersion."

Dep. of Gillette, p. 326, marg. 393.
" " p. 333, marg. 393.

In 1865, Gillette treated such skins with a process Mr.

Monroe gave him, etc.; to wit, "with fat liquor, neats-foot oil, soap, salt and something else," — he don't remember; and this process made the skins soft in some degree; it was understood between them it would soften and remove the squeak.

His ev. p. 328, marg. 385.

With this process he was indefinite as to proportions, and had to experiment to get it right.

His dep. p. 337, marg. 395.

" pp. 333, 334, marg. 391, 392.

He treated same with fat liquor and water in 1867.

His dep. p. 329, marg. 387, end.

And would not swear he did not in 1865.

His dep. p. 328, marg. 386.

Also the same in 1868 — fifty dozen.

His dep. pp. 329–330, marg. 387.

Some rubbed on, and some immersed and softened.

Page 330, marg. 387.

Mr. Gillette used the eggs and water merely to dampen.

His dep. p. 330, marg. 388.

And the salt and water to improve them, as Mr. Monroe said.

His dep. p. 330, marg. 388.

Mr. Monroe gave him the "fat liquor process" in 1865, to improve the skins and remove the squeak.

Gillette's dep. p. 330, marg. 388.

So with the other processes.

Page 336, marg. 395.

On comparing his application of the fat liquor process given him by Monroe, and the Russell process, he shows no diversity except only in *degree*.

His dep. p. 335 and 336, marg. 393, 394.

The quality of skins differs, and the effect of a given treatment differs accordingly.

Gillette, p. 332, 333, marg. 390.
" p. 336–7, marg. 395.

Mr. Gillette testified in the suit at Albany, between this plaintiff and defendants Place, that the effect is the same whether the liquor is cold or warm.

His dep. p. 337–8, marg. 396, end.

And that he used simple fat liquor, warm, etc., in 1865.

His dep. p. 338, marg. 397.

And that he had produced leather by using heated fat liquor, as good as samples treated by Russell's process.

His dep. pp. 338, m. 397.

The squeak is not all removed by "Russell's process" always.

His dep. p. 339, marg. 398.

Samuel Dodge, Jr., also confirms Mr. Monroe.

His dep. pp. 237, 238, marg. 287, 288.
" pp. 241, 242, marg. 290, 291.

Mr. John E. Smith's evidence, offered to rebut, shows, -

(1) That he *does not know* of Monroe's using fat liquor upon skins of his firm.

(2) That their skins were treated to a solution of soap in water, which must be very like the fat liquor plaintiff names in his patent, made of alkali and oil, and such as Monroe says he used there.

It was a question of *effect* produced by the treatments, and of degree, not of principle. Mr. Smith means the fat liquor from the mills. Mr. Monroe means the fat liquor made of alkali and soap, as stated by him.

John W. Place, in 1856, treated such skins with simple fat liquor process, on two hundred dozen, producing the same effect.

His dep. p. 182, 183, marg. 230, 231.

Time fixed by the closing his business in 1857.
And this was before that.

His dep. p. 182, marg. 230.

Again in 1869.

Page 182, 183, marg. 230.

This treatment was with fat liquor alone; he never heated the liquor to or near the boiling point, nor used any other ingredients.

His dep. p. 183, marg, 231, end.

He sold gloves made from such skins, treated with this fat liquor process, for his brother, I. V. Place, in Wisconsin, in 1858.

His dep. pp. 183 – 4, marg. 232.

Henry Hull used same process with same effect, warm and cold.

His dep. pp. 123 – 124, marg. 166, 167.

He saw Adam Quackenbush treat such skins in same way, and with like effect.

His dep. p. 126, marg. 167.

He used eggs, soap, soda and oil sometimes, and sometimes simple fat liquor.

His dep. p. 130, marg. 173.

The fat liquor alone was used on lamb skins, because they are lighter skins, softer and more pliable.

His dep. p. 130, marg. 173.

Those hard, etc., he treated with eggs, oil, sal-soda and soap.

His dep. p. 130, marg. 174.

Has used fat liquor on such skins, the same since the patent as before.

His dep. p. 131, marg. 175, end.

Uriel Case used the same process of fat liquor alone, upon such skins, with the same effect, eighteen or nineteen years ago.

His dep. p. 168 , marg. 215.

He treated bark-tanned deer skins in same way, twenty-five years ago.

His dep. p. 169, marg. 217.

James F. Place used the same, with like effect, 1858, and 1859 or 1860.

His dep. p. 251, marg. 300,
" p. 257, marg. 306.

He also knew his brother, I. V. Place, used it in 1855-56 and 1857, and in 1860.

His dep. pp. 250 – 1, marg. 299 – 300.
" p. 253, marg. 302.
" p. 254, marg. 303 – 304.

Also in 1855.

His dep. p. 256, marg. 305.

Sidney S. Plummer also applied the same process for the same purpose and with the same result.

His dep. pp. 148 – 9. marg. 194 – 195.
" pp. 150 – 1, marg. 196 – 7.

He first knew the effect of fat liquor upon bark-tanned sheep and lamb skins twenty years ago.

His dep. p. 152, marg. 197.
Dep. of Porter, witness for plaintiffs, pp. 369 – 70, marg. 431 – 32, in 1866 and 1868.
,, p. 370, marg. 434, and to end.

Such skins and gloves made from them, softened by this process, were generally in the market before the alleged invention for Russell.

See evidence cited as to what witnesses had treated to such process, manufactured and sold.

Also, —

Dep. of Northrup, pp. 70 – 1, marg. 109 – 10.
" Northrup, pp. 71 – 72, marg. 111 – 112.
" Hull, p. 123, marg, 166 – 7.
" Monroe, pp. 89 –90, marg. 131.
" J. W. Place, p. 183, marg. 232.
" I. V. Place, pp. 154 – 5, marg. 201 – 2.
" I. V. Place, pp. 163 – 4, marg. 210 – 1.

Mr. Russell, the complainant, knew all he ever knew, before his instruction derived from Fulton's visit to Places's mill to see the process first, Dec. 31, 1869, about treating such skins with fat liquor alone as early as 1864, or several years before his alleged invention.

Mr. Dodge told him.

His dep. p. 204. marg. 248, 254.
" p. 227. marg. 277.

Mr. Russell does not contradict it. Why does he not testify? Such skins, apparently so treated, were seen hanging upon Russell's lines and fences and in his shop during that time.

Dep. of Porter, p. 370, marg. 433.
" I. V. Place, pp. 161, 162, 163, marg. 208–9–10.
" Combes, for plaintiff, p. 354, marg. 415.

Is not his silence an admission?

John Fulton says that they used fat liquor for such purpose, p. 34, 35, 36, marg. 67–8–9, beginning in 1866, and using it in various ways.

This defence of want of novelty is not met with the usual oath and evidence of the patentee, but is placed upon some pretended conflict between their evidence on a former suit at Utica and that given here.

First. By the minutes as taken and reported by Mr. Tinsley, with his oath.

(1) Upon this piece of evidence we pray your Honor's judgment as to its competency.

The evidence was taken in short-hand, copied into English in part by another; on which copy the witness *depends* for the alleged evidence he testifies to.

Tinsley's dep. p. 294, marg. 347–8.
" " p. 299, marg. 353.

Mr. Tinsley has no recollection, even after reading over his minutes of the evidence so as to enable him to testify, nor can he swear that the notes are entirely accurate.

His dep. p. 299–marg. 353.

(2) If it is competent, it does not substantially conflict, but confirms.

(*a*) The infirmities of the faculties of speech and hearing require such evidence at best to be carefully scrutinized.

(*b*) This evidence involves the correctness of the witness in hearing the question, the power of the witness to express himself plainly, clearly and intelligently, the accuracy of the reporter in hearing and reporting the evidence; and further, in this case the witness' *recollection is not refreshed*, and a part of the evidence was not taken from the short-hand by him.

Second. By raising some points of conflict in the evidence of particular witnesses.

For instance, it is suggested argumentatively that the defendants Dodge could not have known of the fat liquor process in 1867 or 1868, because they conferred with Messrs. Gillette and Combes on their "oat-meal" process, and did not mention the use of fat liquor to take out the squeak.

Dep. of Gillette, p. 321, marg. 377.
" " on cross-examination, p. 331, 332, marg. 388–9–90.
" Wm. H. Combes, p. 354–5, marg. 416.

From which it appears that the substance of the transaction was, that Gillette had procured a *receipt* for treating such skins, of one Smith, in South Dedham, and made trial of it at Mr. Dodge's shop, with casual remarks relating to it.

The *silence* of Messrs. Dodge on the occasion as to the use of fat liquor has no weight in the direction intended, of impeaching their evidence.

Moreover, Gillette and Combes were both familiar with the use of fat liquor for the purpose of softening such leather and removing the squeak, some *two or three years before* this trial of their oat-meal process at Dodge's.

Dep. of Gillette, p. 328, marg. 385.
" " p. 329, marg. 386.
" Combes, p. 354, marg. 415.

Mr. Dodge is *confirmed* as to such treatment in 1858 by witness for the plaintiff.

Hevey, pp. 377–8, marg. 443.
" pp. 379–80, marg. 444.

Pretending the purpose of the treatment was to make the skins blacker in coloring. The fact of the treatment is shown by Mr. Dodge also; but the purpose shown to be, to *soften* and *not color*.

Dodge's dep. p. 406, marg. 475.
" pp. 410, 411, marg. 480.

The simple, straightforward, honest evidence of Samuel Dodge, Sen., will not stand impeached by such evidence; nor will his thorough early training, and long subsequent experience of nearly fifty years in the art of kid dressing and finishing, suffer greatly in the comparison with that of the complainant, whose silence deprives us of any information in relation to it; and, at the same time, it conceals from us any want or deficiency therein which might otherwise be exposed; nor with that of his son-in-law, Mr. Fulton, his operator, who left his clerkship in a store in 1865, and entered directly into business, and upon his "experiments" in 1866.

Dep. of Nath'l Bentley, pp. 141, 142, marg. 186, 187.
" J. H. Bentley, pp. 147, 148, marg. 192, 193.

Dep. of Fulton, p. 276, marg. 327–end.
" Plummer, pp. 149, 150, marg. 195, 196.

And those who say they did not know of such process prior to the patent cannot testify it was not in use. *Their evidence is merely negative.*

Brownell, p. 384, marg. 449.
Cuyler, p. 386, marg. 451.
Richardson, pp. 381, 383, marg. 446, 447, who confirms rather than rebuts.
Welch, pp. 373, 374, marg. 437, 438, who does only $1,000 to $2,000 worth a year.

The attempt to impeach or rebut the testimony of James L. Northrup utterly fails,—

1st. Because it is only negative, and hardly that in some cases.

2d. Because the witnesses had no adequate knowledge.

Dep. of Newton, p. 391, marg. 459.
" Earle, pp. 387, 388, marg. 453, 454.

The fact that less of such skins were used from 1862 to 1870, or that bark-tanned sheep and lamb skins in the bark-tanned state were used, does not impeach the defendants' evidence of prior use.

The demand for use in the army required them in the bark-tanned state.

Dep. of Cuyler, plaintiff's witness, pp. 385, 386, marg. 451.
" Heacock, p. 122, marg. 164.

The trade in the mitten and glove business has increased four fold in ten years; and great improvement in dressing skins.

Dep. of Cuyler, p. 386, marg. 451–end.
" Porter, p. 371, marg. 435.
" " p. 372, marg. 436.

4. This process of employing fat liquor alone in the treatment of leather, including bark-tanned lamb and sheep skins, substantially as described in the patent, prior to the complainant's discovery or invention, was not *experimental; but those who used it had an intelligent comprehension of its character and effects produced.*

This is manifest from the *discrimination between the different qualities and conditions of the skins for treatment with fat liquor alone, or fat liquor with other ingredients adapted to the skin.*

Dep. of Dodge, pp. 193, 194, marg. 332, 333.
" " pp. 198, 199, marg. 248.
" " p. 209, marg. 260; and pp. 215, 216, marg. 266.
" " pp. 232, 233, marg. 281, 282, 283.

And mainly throughout his deposition.

Dep. of Monroe, pp. 105, 106, marg. 147.
" Christie, p. 63, marg. 100, 101.
" Northrup, pp. 69, 70, marg. 108, 109.
" I. V. Place, p. 153, marg. 199.
" Plummer, p. 152, marg. 198.

And others before cited.

It is noticeable that in almost every instance where a witness has indicated by his answer that he had "*experimented*" with such treatment, that the word *experimenting* was adroitly woven into the *question*, and not found in the answer itself; thus eliciting an answer to a technical term, while the witness manifestly intended simply that he employed that treatment in making trial of leather thus finished upon the market; especially in the reported evidence taken at Utica. His experiments were not to test the mode

of operation, and the effect of fat liquor upon the skin, for that was well known; but to test the trade with such gloves.

In applying what they call the Russell process it is a matter of experiment as to quantities and proportions.

Dep. of Gillette, pp. 334, marg. 392-3.

5. It is not a material question whether the result of the use of the process was as perfect prior to said alleged invention as it is now. The vital question is, whether substantially the same process of treatment by fat liquor alone was used prior to said invention.

(1) If the principle and idea is embodied, the invention is perfect. The question is not in regard to the perfection of the *product*, but the substantial identity of the process by which the result is produced.

(2) The perfection of the product is a question of *degree* and not of principle, if the process of treatment is substantially the same, and does not affect the question of priority of invention.

Russell *v.* Klein, p. 146, fol. 717, Hall, J.

(3) It is no part of the invention secured by the patent that the alleged process should remove the "squeak" from the skins.

(*a*) That is one of the alleged *effects* produced by the process, which is not the subject of a patent.

(*b*) It only goes to the question of *degree*, and not to the essence of the invention.

(*c*) Moreover, in the very sample treated by complainants' and introduced in evidence as complainants' "Exhibit No. 1," the *squeak was not removed.*

Hewlett's ev. pp. 292, 293, marg. 345.

IV.

If it be claimed that the matter of the second clause in the reissue is a *material* and *substantial part* of the invention, and this suit can be maintained for a violation of that claim, we reply, —

1. That the defendants have never infringed that claim, and there is no evidence to establish such infringement.

(1) They have never used the compound for such treatment.

Dep. of Whiting for compl'ts, pp. 45, 46, marg. 79, 80.
" Whiting for compl'ts, p. 52, 53, marg. 87, 88.
" Fred'k S. Green for compl'ts, p. 54, marg. 89.
" Putman for compl'ts, p. 57, marg. 93.
" Samuel Dodge, Sen., p. 199, marg. 248, end, and 249.
" I. V. Place, p. 154, marg. 200.

(2) They have never heated the fat liquor to or near the boiling point for such use.

Dep. of S. Dodge, Sen., p. 231, marg. 281.
" " p. 199, marg. 248; and p. 207, marg. 257, 258.
" I. V. Place, p. 154, marg. 200.

(3) *In fact, the application of heat to fat liquor for the purposes mentioned in the patent was well known and in general use prior to the alleged invention of complainant, but without its having been heated to or near the boiling point.*

See reference to evidence under third sub-division of the third general point, p. 23 of this brief.

(4) But the application of heat in any way to the compound of the second claim defendants never employed, as they never used the compound.

(1) Any use that defendant, Samuel Dodge, Sen., may have made of the ingredients of said compound was the same before the alleged invention as after.

2. *The patent cannot be sustained upon the second claim as matter of law.*

(1) The patentee in his oath accompanying the application for reissued Letters Patent declares "that he verily believes that by reason of an insufficient and defective specification his aforesaid Letters Patent are inoperative and invalid"; and the specification in the reissued patent is substantially in all respects the same as the original so far as relates to the second claim. See p. 273, marg. 313, 324 (the oath).

(*a*) The only condition on which the reissue can be obtained and jurisdiction in the commissioner to act upon it, is that the original patent is inoperative or invalid by reason of such insufficient and defective specification. The proceeding is therefore equivalent to a distinct admission made under the solemnity of an oath, that the original patent (and hence the second claim in the reissue) has no validity in the sense of entitling a patentee to an action for an infringement.

Moffitt *v.* Garr, MS., Leavitt, J., Ohio, 1860.
Laws' Dig. p. 616, § 49.

(2) If the use of fat liquor alone as described in the specification is a material and substantial part of the invention, and essential on that account to making the second claim operative and valid, then the second claim is invalid because the use of fat liquor alone is old.

(3) Because the proportions of the elements are indefinite, as stated under first point.

And for the reasons before stated.

(4) In the case at bar it cannot be held that the claim in the reissued patent of the use of fat liquor alone in such process was made through inadvertence, accident or mistake, so that he might disclaim it under the statute § 54 chap. 230 of Acts of 1870, since it is the only and distinctive new matter interpolated into the old patent by the reissue.

V.

If the complainant used his alleged invention under either claim more than two years before he applied for his patent for dressing bark-tanned lamb and sheep skins which he put upon the market, this amounted to an abandonment of his right to a patent, and he cannot recover.

(1) He did so use it, as well as he knew, until he learned of Place, Dec. 31, 1869.

Dep. of Uriel Case, pp. 170, 171, 172, marg. 218, 219.
" " pp. 176, 177, marg. 224, 225.
" Isaac V. Place, pp. 161, 162, 163, marg. 208, 209, 210.
" Fulton, p. 34, marg. 67.
" Combes, p. 354, marg. 415, 416.
" Dodge, p. 204, marg. 253, 254.
" Porter, pp. 370, 371, marg. 433, 434.
Law. U. S. Stat. at large, p. 208, Acts 1869 and 1870, ch. 230, § 61, 5th sub-division.

It is significant that the complainant, though competent as a witness and present at taking of evidence, did not offer himself as a witness to deny or contradict the evidence of Dodge, Monroe and others, as to giving to plaintiff his information of the alleged improvement.

It should be considered therefore not only as uncontra-

dicted but as admitted by plaintiff; and it shows clearly that he was not the first and original inventor of the process.

VI.

Complainant's counsel denies such prior use of his alleged process, and attempts to contradict or impeach the evidence of defendants, but fails in the attempt.

1. It is suggested by complainant in argument, that his alleged process must be new, from the consideration that such treatment of bark-tanned lamb and sheep skins for the purpose of making them soft and suitable for gloves is more generally in use than before the patent.

(1) This argument does not define or discriminate between the two claims as to which process or treatment under the respective claims has recently gone into more general use.

(2) The complainant claims that the treatment under the second claim is especially *his process*.

Dep. of Gillette, p. 326, marg. 383.
" Fulton, pp. 37, 38, marg. 70, 71.

(3) There is no evidence that such increased number of bark-tanned lamb and sheep skins, softened and used for gloves, were so softened by the process described in the second claim of the patent, except those treated by Russell & Co. and by Gillette.

(*a*) While the evidence is positive that fat liquor alone was used by defendants in the same manner substantially as they had done many years prior to complainant's invention, and if that had gone into more general use, it was but a greater *demand* and use of an old thing.

See evidence before cited under head of Want of Novelty.

(4) The laws of trade, of demand and supply, regulate the amount required of a particular article for use.

(*a*) The demands of trade are regulated greatly by the supply of the varied materials for manufacture to meet such demand.

And also by the varying fancies of style and fashion.

(*b*) The public might have but slight call for gloves under the plain, honest name of *bark-tanned sheep or lamb skins*, yet crowd the market places for the same article under the fancy name of *dog-skin* gloves.

(*c*) Again, the state of the art as to degree of finish given a particular article affects the demands.

If bark-tanned sheep and lamb skins treated with said process alike were at one time made only into a coarser style of gloves for men and boys, and at another into nice button tops or ladies' gauntlets, under the style of dog-skin gloves, the demand for them would be widely different.

(5) The glove trade, both in style and material for manufacture, has greatly changed in Gloversville, and the trade generally within a few years.

Dep. of Cuyler, p. 386, marg. 452.
" Porter, p. 371, marg. 435.

Hence we submit that the circumstances of such increased use of such skins treated with fat liquor ought not to *impeach* witnesses like James L. Northrup, Philander Heacock, Henry E. Krause, Samuel Dodge, Sen., Isaac V. Place, James F. Place, James B. Chapman, Jonathan Ricketts, Samuel Dodge, Jr., Wm. H. Monroe, Uriel Case, Henry Hull, John W. Place, and the others to whose evidence reference has been made.

(2) The next offer of impeaching evidence against and in reply to defendants' proofs of want of novelty, is to show that if the skin be permitted to remain in the fat liquor as

long as stated by some of the witnesses, it would spoil the skin; and that but one dipping, and of short time in the liquor, is the method under the Russell process.

John Fulton, pp. 274, 275, 276, marg. 326, 327, 328.

(1) The time which it is safe to allow the skins to remain in the fat liquor depends upon the alkaline strength of the liquor.

Samuel Dodge, Sen., p. 407, marg. 477.
Isaac V. Place, pp. 412, marg. 482, end.

(2) The strength of fat liquor varies according to the time it is taken out in the scouring of deer skins, the kind and condition of the skin when taken, and the degree of reduction by water afterwards.

Christie, p. 61, marg. 98.
Dodge, p. 207, marg. 257.

No cast-iron rule as to time can be established, but the time the skin may remain in the liquor must be determined by the skill of the operator, depending upon the strength of the liquor, its temperature, and the quality of the skin.

Instance. — Those of Jeffries & Co., tried unsuccessfully by Russell & Co., and afterwards successfully by Dodge.

Dep. of Bentley, pp. 141, 142, marg. 186, 187.
" " pp. 147, 148, marg. 192, 193.

(3) Neither the length of time the skins are to remain in the fat liquor when so dipped, nor the strength of the fat liquor to be used, are stated or defined by the patent; and if those elements are essential to the process, such omission is fatal to the validity of the patent.

If such elements are so uncertain and indefinite as to require

trial and experiment to make the alleged invention practicable, the patent is void.

Wood *v.* Underhill, 5 How. 1.
Tyler *v.* Boston, 7 Wal. 327.
Parker *v.* Stiles, 5 McLean, 54.

The specification is not in such full, clear, concise and exact terms as to enable any person skilled in the art to use said alleged invention as stated in the *second* claim, as required by statute, ch. 230, § 26, Acts of 1870.

Dep. of Gillette, p. 337, marg. 395.
" " pp. 333–4, marg. 391.
" Fulton, pp. 286, 287, marg. 339, 340.

And this is what he calls the Russell process.

Fulton's dep. pp. 35, 36, marg. 68, 69.
" " p. 57, marg. 70, 71.
" " p. 289, marg. 342.
Gillette's dep. pp. 333, 334, marg. 391, 392.

The specification expressly states that the proportions of the ingredients may be more or less varied.

The "principal feature of the invention" consists in the *employment of fat liquor.*

The fat liquor is made from an oil cut with a suitable alkali, or obtained by "scouring deer skins after tanning in oil."

See specification, p. 18, marg. 44.

And the fat liquor procured from scouring deer skins consists of oil, alkali and water.

Dep. of Fulton, p. 38, marg. 71.

Soap has the same constituents.

Dep. of Fulton, p. 38, marg. 71.

Salt only makes the leather moist and preserves it.

Dep. of Fulton, p. 38, marg. 71.

Mr. Dodge says if his fat liquor is mostly out and he wants to make more, he "*adds soap, sal-soda and water*" to make it more.

It requires the skill, in the business, of a man like Mr. Dodge to proportion and apply said ingredients, as the skin requires, to make it useful.

Hence, if the compound is anything in fact and effect more than fat liquor, the great latitude of proportions in the specification, and utter absence of "clear, concise and exact terms," so as to enable a person skilled in the art to prepare and apply the so-called Russell process from the specification alone, invalidates the patent.

And if the compound is only in substance and effect the same as fat liquor, then the description and distinct claim for the compound invalidates the patent.

ON MATTER OF ESTOPPEL BY FORMER VERDICT AND JUDGMENT.

It is claimed by complainant that the defendants are estopped, by the verdict and judgment in the suit tried at Albany between the same parties, from the trial in this case of certain issues alleged to have been tried in that suit.

I.

An estoppel is an admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted or established to be afterwards drawn in question between the same parties or their privies, and relates only to issues of fact and not of law.

Burlen *v.* Shannon, 99 Mass. 200, 202, 203.

Washington Steam Packet Co. *v.* Sickles, 24 How. 333.
Packet Co. *v.* Sickles, 5 Wall. 580.
2 Smith's Leading Cases, 573 *et seq.*
Autram *v.* Morewood, 3 East, 346.
Queen *v.* Hartington, 4 El. & Bl. 780.

Who are privies? 1 Greenl. Ev. (12th ed.) pp. 559, 560.

1. *Want of novelty* in the alleged invention is the only issue of fact tried in the case between said parties at Albany which may bear upon this case.

2. A verdict and judgment are not conclusive unless it appears by the record, or by parol evidence in addition thereto, that the prevailing party in the former suit prevailed upon the very issue in support of which he offers the record in evidence; and when it is left doubtful upon which of two grounds the successful party prevailed in such former suit, such record or determination will not operate as an estoppel.

McDowell *v.* Langdon, 3 Gray, 573.
Burlen *v.* Shannon, 99 Mass. 204, 205.
Same *v.* same, 3 Gray, 387.
Same *v.* same, 14 Gray, 433, 439.

3. In the trial of said case at Albany the question of infringement of either or both claims in the patent was open; that is, by using the process of fat liquor alone applied to the skins according to the first claim, or by using the compound of the second claim And the issue of *want of novelty* and prior use applied to both claims.

The jury might have found their verdict upon an infringement of either claim in the patent, and found the plaintiff the first and original inventor of that claim, without finding upon either infringement or priority of invention under the

other claim; and it does not appear which issue and upon which claim the verdict was rendered.

4. The issue of priority depends upon the *construction* the Court gives the patent; and it does not appear what construction the Court gave to the patent in the case tried at Albany.

(1.) If at Albany the Court construed the patent to require the heating of the fat liquor to or near the boiling point before use under either claim, then it is manifest the issue of priority settled by the verdict and judgment is not the same issue as that with a construction that the heating applied only to the compound or was not an essential element of the patented invention.

And it does not *appear* upon what construction of the patent the issue of novelty was tried at Albany.

But a verdict and judgment are conclusive by way of estoppel only as to those facts which were necessarily involved in them, without the proof or admission of which such a verdict and judgment could not have been rendered.

Burlen *v.* Shannon, 99 Mass. 202.

In order for the complainant to avail himself of a former verdict or decree by way of estoppel, he must *plead* the same or he will be deemed to have waived the estoppel.

Wood *v.* Jackson, 8 Wend. 9.
Rice *v.* King, 7 J. R. 20.
Mony *v.* Harris, 2 J. R. 24.
Wright *v.* Butler, 6 Wend. 284.

T. L. WAKEFIELD,
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